SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 711

HELEN PARKER, IONE LANE WHEELER, KATHERINE GATES, ET AL., PETITIONERS,

vs.

COUNTY OF LOS ANGELES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

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[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 534228

Clerk's Transcript

HELEN PARKER, IONE LANE WHEELER, KATHERINE GATES, Cornelius Webster, William G. Cole, J. L. Martin, Robert L. McGuire, Julleana Glisby, Alice M. Parsons, Caroline Pottenger, John R. McCroskey, Mattie A. Belino, Ada Gruver, Major West, Alice Walsh, C. H. Demarest, Betty S. Selden, Miriam Lasarou, Ralph L. Davis, Winifred McConnell, Columbus S. Bell, Shirley Galat, Ruth Thomasen, Kent Hammond Thies, Lawrence Lucks, individually and in a representative capacity for and on behalf of 20,000 employees of Los Angeles County similarly situated, Plaintiffs,

vs.

COUNTY OF LOS ANGELES; WILLIAM A. SMITH, LEONARD J. ROACH, John Anson Ford, Raymond V. Darby and Roger W. Jessup, and each of them as members of the Board of Supervisors of said County; Wayne Allen, as Chief Administrative Officer of said County; Harold W. Kennedy as County Counsel of said County; Charles C. Mack, G. H. Newland and T. J. O'Keefe, and each of them, as members of the Civil Service Commission of said County; Clifford Amsden, as Secretary and Chief Examiner of said Commission; Michael Donoghue, as Registrar of Voters of said County; I Doe, II Doe, III Doe, IV Doe and V Doe, Defendants

AMENDED COMPLAINT FOR INJUNCTION—Filed February 2, 1948

I

(a) Each of the plaintiffs named in this paragraph is a member of the United Public Workers of America, C. I. O., Local 246; said Local 246 is a voluntary unincorporated association and labor union representing approximately

fifteen hundred employees of Los Angeles County. Each of [fol. 2] said employees is a citizen of the United States, a resident of the County of Los Angeles, State of California, and is now an employee of the County of Los Angeles in the classified civil service thereof, with permanent status; set forth below, opposite the name of each plaintiff, is the approximate date on which his employment with the County of Los Angeles began, and the position he now holds:

Helen Parker, 1943, Admission Worker.
Ione Lane Wheeler, 1945, Medical Social Case Worker.
Katherine Gates, 1937, Case Work Director.
Cornelius Webster, 1947, Administrative Assistant.
William G. Cole, 1924, Intermediate Attendant.
J. L. Martin, 1928, Attendant.
Robert L. McGuire, 1930, Attendant.
Julleana Glisby, 1939, Janitress.
Alice M. Parsons, 1941, Medical Social Worker.
Caroline Pottenger, 1946, Occupational Therapist.
John R. McCroskey, 1942, Attendant.
Mattie A. Belino, 1943, Attendant, Intermediate.
Ada H. Gruver, 1946, Nurse.
Major West, 1944, Laundry-Washer Man.

(b) Each of the plaintiffs named in this paragraph is a member of the American Federation of State, County and Municipal Workers, Local 558, A.F.L.; said Local 558 is a voluntary unincorporated association and labor union rep- [fol. 3] resenting approximately one thousand employees of Los Angeles County. Each of said employees is a citizen of the United States, a resident of the County of Los Angeles, State of California, and is now an employee of the County of Los Angeles in the classified civil service thereof, with permanent status; set forth below, opposite the name of each plaintiff, is the approximate date on which his employment with the County of Los Angeles began, and the position he now holds:

Alice Walsh, 1929, Supervising Case Worker.
C. H. Demarest, 1931, Supervising Case Worker.
Betty S. Selden, 1934, Case Reader.
Miriam Lasarou, 1945, Intermediate Social Case Worker.
Ralph L. Davis, 1945, Social Worker.
Winifred McConnell, 1946, Social Case Worker.
Columbus S. Bell, 1946, Social Case Worker.

Shireley Galat, 1945, Social Case Worker.
Ruth Thomasen, 1946, Social Case Worker.
Kent Hammond Thies, 1946, Case Work Training Supervisor.
Lawrence Lucks, 1944, Deputy Probation Officer.

(c) The plaintiffs named in paragraphs (a) and (b) above bring this action in their own behalf as individuals, and in a representative capacity on behalf of approximately 20,000 other employees of the County of Los Angeles similarly situated. Said other employees are similarly situated, [fol. 4] in that they are, and each of them is, employed by said County under and by virtue of the same provisions of the Charter of the County of Los Angeles, (hereinafter called Charter), and the same Rules of the Los Angeles County Civil Service Commission (hereinafter called Rules), and subject to the same provisions of said Charter and Rules respecting examination, selection, appointment, tenure, promotion, demotion, transfer, discipline, discharge, suspension, classification and rating of efficiency, and are now, or are about to be, subjected to the same "Loyalty Check" hereinafter alleged. The question herein is one of common and general interest to all said 20,000 employees of said County, and said employees are numerous, and it is impractical to bring them all before this Court.

II

(a) Defendant County of Los Angeles, (her-inafter called County) is a political subdivision of the State of California charged with governmental powers, including the power to sue and be sued.

(b) Defendants, William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, are members of and each of them is a member of, the Board of Supervisors of the County, elected respectively, from the first, second, third, fourth, and fifth supervisor districts of said County. Defendant, Raymond V. Darby is Chairman of said Board of Supervisors.

[fol. 5] (c) Defendant, Wayne Allen, is Chief Administrative Officer of the County.

(d) Defendant, Harold W. Kennedy, is the County Counsel of the County.

(e) Defendant, Eugene W. Biscailuz, is the Sheriff of the County.

(f) Defendants, Charles C. Mack, G. H. Newland and T. J. O'Keefe, are members of, and each of them is a member of, the Civil Service Commission of the County.

(g) Defendant, Clifford N. Amsden, is Secretary and Chief Examiner of said Civil Service Commission.

(h) Defendant, Michael Donoghue, is the Registrar of Voters of the County.

(i) Each of the defendants named in subdivisions (b) through (h) above, is a resident of the County and engaged in the performance of the duties of their respective offices alleged above, in the City of Los Angeles in the County.

(j) Defendants Allen, Kennedy, Biscailuz and Amsden have been constituted by defendants members of the Board of Supervisors, and continuously since August 26, 1947 have been and now are, members of a Committee ordered and directed to meet, coordinate, supervise and effectuate the Loyalty Check hereinafter alleged. Said defendants will hereinafter be collectively referred to as the Committee.

[fol. 6]

III

Plaintiffs are ignorant of the true names of the defendants sued herein by the fictitious names of I Doe, II Doe, III Doe, IV Doe and V Doe, and hereby ask leave of Court to amend their complaint by inserting the true names of such defendants in the place and stead of such fictitious names, when such true names shall have been ascertained.

IV

On or about April 1, 1947, the Board of Supervisors of the County, comprised of the members alleged in paragraph II (b) hereof, directed that defendants Wayne Allen and Harold W. Kennedy study, prepare and recommend ways and means in which an investigation could be made into the political beliefs and affiliations of all employees of the County, in order to determine whether or not there are any members of the Communist Party of the United States, avowed or otherwise, or any persons who are "communis-

tic" or "subversive" in the employ of the County, its agencies and districts.

V

Under and by virtue of said direction of said Board of Supervisors, defendants, Wayne Allen and Harold W. Kennedy, did on or about August 15, 1947, submit to said Board of Supervisors their recommendations that there be conducted among the employees of the County a "Loyalty Check."

[fol. 7] A true and correct copy of said recommendations is attached hereto, marked Exhibit "A," and by this reference made a part hereof as fully as if set forth herein at length, and is hereinafter called the "Loyalty Check."

VI

On or about August 26, 1947, said defendants members of the Board of Supervisors did accept and adopt said "Loyalty Check" and did order and direct that said "Loyalty Check" be put into operation and effectuated.

VII

Defendants members of the Committee are now engaged in the coordination, supervision and effectuation of the "Loyalty Check" and have threatened and do now threaten, and will, unless restrained by this Court, cause plaintiffs and all employees similarly situated to be discharged or otherwise penalized in their employment unless they execute the oath and affidavit prescribed and required by paragraph numbered 5 of said "Loyalty Check."

VIII

In the coordination, supervision and effectuation of the "Loyalty Check," defendants members of the Committee have threatened to, intend to, and will, presume that employees of Los Angeles County, (including plaintiffs and all employees similarly situated) who have ever belonged to or directly or indirectly supported or followed any of the organizations or publications listed in said oath and affi-

[fol. 8] davit, are subversive, and will

(a) Publicly report such employees to the defendants members of the Board of Supervisors as subversive and disloyal, and

(b) Call upon such employees to carry the burden of proving to said defendants that they are not subversive and disloyal, and

(c) Reduce, remove or otherwise discriminate against such employees for failure so to prove.

IX

In the coordination, supervision and effectuation of the "Loyalty Check," defendants members of the Committee intend to, have threatened to, and unless restrained by this Court, will,

(1) Inquire into the political beliefs of plaintiffs and all employees similarly situated;

(2) Inquire into the political and community organizations and associations of plaintiffs and all employees similarly situated;

(3) Require that plaintiffs and all employees similarly situated reveal and disclose their political beliefs and opinions, the political and other organizations to which they now belong or have ever since December 7, 1941 belonged, or which they have "directly or indirectly supported or followed";

(4) Require that plaintiffs and all employees similarly [fol. 9] situated reveal and disclose the newspapers, books, magazines or other publications which they have since December 7, 1941, directly or indirectly supported or followed, or do now so support or follow;

(5) Require that plaintiffs and all employees similarly situated renounce and forego political opinions, beliefs, associations, organizations, newspapers, books, magazines or other publications considered or deemed by said defendants to be "communistic" or "subversive" or otherwise unorthodox in the discretion of the said defendants;

(6) Define in their arbitrary and uncontrolled discretion, those thoughts, beliefs and opinions, those political organizations and associations, and those newspapers, books magazines or other publications which shall be orthodox and unorthodox for plaintiffs and all employees similarly situated.

X

In the coordination, supervision and effectuation of the "Loyalty Check," defendants members of the Committee intend to, have threatened to, and unless restrained by this Court, will,

(1) Publicly report to the defendants members of the Board of Supervisors as subversive and disloyal, plaintiffs and all employees similarly situated, or some of them, on account of (a) any opinion or belief now held or held at any time subsequent to December 7, 1941, by said plain-[fol. 10] tiffs or said employees and deemed "subversive" or "communistic" or otherwise unorthodox in the arbitrary discretion of said defendants; (b) membership at any time, past or present, in any political organization or association, or having directly or indirectly supported or followed, at any time, past or present, any political organization or association listed in the oath and affidavit constituting part of said "Loyalty Check"; (c) having directly or indirectly supported or followed at any time, past or present, any newspaper, book, magazine or other publication listed in the oath and affidavit constituting part of said "Loyalty Check."

(2) Subject to a penalty which may include discharge, plaintiffs and all other employees similarly situated, or any of them, on account of, (a) any opinion or belief now held or held at any time subsequent to December 7, 1941, by said plaintiffs or said employees and deemed "subversive" or "communistic" or otherwise unorthodox in the arbitrary discretion of said defendants; (b) membership at any time, past or present, in any political organization or association, or having directly or indirectly supported or followed, at any time, past or present, any political organization or association listed in the oath and affidavit constituting part of said "Loyalty Check"; (c) having directly or indirectly supported or followed at any time, past or present, any newspaper, book, magazine or other publication listed in [fol. 11] the oath and affidavit constituting part of said "Loyalty Check."

(3) Interfere with the rights of plaintiffs or any employees similarly situated if they so elect to join any political party, including the Communist Party, whether or not deemed orthodox or unorthodox by defendants members

of the Committee, or support or follow some or all of the principles, tenets or beliefs of any such party.

XI

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts of defendants in connection therewith are without authority and unlawful in that said "Loyalty Check" and said acts of defendants discriminate against plaintiffs and all employees similarly situated because of their political opinions or affiliations contrary to and in violation of Section 41 of the Charter of the County of Los Angeles.

XII

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts and threatened acts of defendants in connection therewith as alleged in paragraphs VII, VIII, IX and X above, are without authority and unlawful for the reason that they deny to plaintiffs and to all employees similarly situated due process of law in violation of the First and Fourteenth Amendments to the Constitution of the United States in that:

[fol. 12] (a) They require plaintiffs and all employees similarly situated to disclose their political opinions and associations;

(b) They abridge for plaintiffs and all employees similarly situated freedom of speech, freedom of opinion, freedom of belief, freedom of association, freedom of the press and the opportunity for free political discussion and association;

(c) They prescribe or threaten to prescribe that which is orthodox in political belief and association for plaintiffs and all employees similarly situated.

XIII

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts and threatened acts of defendants in connection therewith as alleged in paragraphs VII, VIII, IX and X above, are without authority and unlawful because they deny plaintiffs and all employees similarly situated due process of law contrary to the First

and Fourteenth Amendments to the Constitution of the United States and Article I, Section 9 thereof in that they subject said plaintiffs and said employees to penalties which may include discharge by reason of opinions, speech, associations, newpapers, books, magazines or other publications and acts held, engaged in, belonged to, participated in or read, prior to the time the said "Loyalty Check" was adopted by the defendants, William A. Smith, Leonard J. [fol. 13] Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, members of the Board of Supervisors of the County of Los Angeles, and is thereby an ex post facto law and a bill of attainder.

XIV

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts of defendants in connection therewith as alleged in paragraphs VII, VIII, IX and X above, are without authority and unlawful because they are an ex post facto law contrary to and in violation of Article I, Section 16 of the Constitution of the State of California in that they subject plaintiffs and all employees similarly situated to penalties which may include discharge by reason of opinions, speech, associations, newspapers, books, magazines or other publications and acts held, engaged in, belonged to, participated in or read prior to the time the said "Loyalty Check" was adopted by the defendants, William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, members of the Board of Supervisors of the County of Los Angeles, and it is thereby an ex post facto law and bill of attainder.

XV

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts of the defendants, William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, members of the [fol. 14] Board of Supervisors of the County of Los Angeles in connection therewith, and the acts of the defendants, Wayne Allen, Harold W. Kennedy, Eugene W. Biscailuz, and Clifford Amsden, are without authority and unlawful because they deny plaintiffs and all employees similarly situated of due process of law contrary to the Fourteenth

Amendment to the Constitution of the United States and Article I, Section 9 thereof, and Articles I, Section 16 and Article VI, Section 1 of the Constitution of the State of California in that they constitute a finding of fact and determination that the Communist party, Communism and Communists are illegal and subversive, that they advocate the overthrow of the government by force and violence, the authority of which to make such finding and determination is reserved solely to the courts, and said finding and determination are by virtue thereof violative of the division of governmental powers prescribed in the Constitution of the United States and of the State of California and are a bill of attainder.

XVI

The said "Loyalty Check" is void on its face and as authoritatively construed, and the acts of defendants in connection therewith as alleged in paragraphs VII, VIII, IX and X above, are unlawful and without authority because they deprive plaintiffs and all employees similarly situated of the equal protection of the laws in violation of the [fol. 15] Fourteenth Amendment to the Constitution of the United States in that they deny to said plaintiffs and said employees equal opportunity for employment and establish conditions of employment not applicable to employees generally and is a wholly arbitrary, unreasonable and discriminatory classification of employees based upon their exercise of their constitutional rights to freedom of political and other thought, opinion, belief, conscience, speech, press, association and of organization based upon a wholly unascertainable, indefinite, vague, ambiguous and uncertain standard of classification.

XVII

The said "Loyalty Check" is void on its face and as authoritatively construed, and the acts of defendants in connection therewith are without authority and unlawful because they deny plaintiffs and all employees similarly situated due process of law contrary to the Fourteenth Amendment to the Constitution of the United States in that they discriminate against said plaintiffs and said employees and assess penalties against them without prescribing any ascertainable standard therefor.

XVIII

The said "Loyalty Check" is void on its face and as authoritatively construed, and the acts of defendants Wayne Allen, Harold W. Kennedy, Eugene W. Biscailuz and Clifford Amsden, in connection therewith, as alleged in [fol. 16] paragraph VIII above, are without authority and unlawful because they deny plaintiffs and all employees similarly situated due process of law and equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States in that they establish a presumption that any county employee who has ever belonged to or directly or indirectly supported or followed any organization listed in the oath and affidavit is now subversive and said presumption has no rational or other relationship between the fact of an employee's membership in or having directly or indirectly supported or followed any such organization and the fact that he is now subversive, and further in that the creation of such presumption gives the employee so affected no reasonable or other opportunity to submit the facts in his defense.

XIX

Plaintiffs and all employees similarly situated have no plain, adequate or speedy remedy at law, and by this action a multiplicity of suits on behalf of some 20,000 employees of the County of Los Angeles seeking protection from the void and unlawful acts and threatened acts of the defendants will be obviated.

XX

By reason of the "Loyalty Check" and the unlawful acts and threatened acts of the defendants as alleged herein, plaintiffs and all employees similarly situated have suf- [fol. 17] fered and will suffer irreparable damage which can not be compensated by monetary damages assessed by a court of law, in that they will be subjected to an unlawful and unconstitutional inquiry into their political opinions and affiliations; they will be required to disclose to defendants their opinions and affiliations under pain of a penalty which may include discharge; they will be publicly stigmatized as subversive and disloyal by reason of their political opinions and beliefs.

As and for a second, separate count and cause of action, plaintiffs allege:

I

Reallege as fully as if set forth herein at length, all of the allegations of their first cause of action in this complaint.

II

There is an actual controversy between plaintiffs and the employees similarly situated on whose behalf this action is brought, and the defendants, in the following respects:

(1) Whether the oath and affidavit required by defendants to be executed as hereinabove alleged, deprives plaintiffs and all employees similarly situated of their constitutional rights and privileges, as hereinabove set forth.

(2) Whether the presumption applied by defendants, [fol. 18] that County employees who have ever been members of or directly or indirectly supported or followed any of the organizations listed in said oath and affidavit, are subversive and disloyal, violates the constitutional rights and privileges of plaintiffs and all employees similarly situated, as hereinabove set forth.

(3) Whether the threat by defendants publicly to report as disloyal and subversive all County employees who have ever belonged to or directly or indirectly supported or followed any of the organizations listed in said oath and affidavit, violates the constitutional rights and privileges of plaintiffs and all employees similarly situated, as hereinabove set forth.

(4) Whether the imposition of the burden of proof that they are not subversive or disloyal upon such County employees who have ever belonged to or directly or indirectly supported or followed any of said organizations, as hereinabove alleged, violates the constitutional rights and privileges of plaintiffs and all employees similarly situated, as hereinabove set forth.

(5) Whether the threatened action of defendants to discharge or otherwise penalize any County employee who fails to carry such burden of proof, as aforesaid, violates

the constitutional rights and privileges of plaintiffs and all employees similarly situated, as hereinabove set forth.

(6) Whether the threatened action of defendants in in- [fol. 19] quiring into the political opinions and affiliations, newspapers, books and other publications of all County employees, or which they have supported or followed, violates the constitutional rights and privileges of plaintiffs and all employees similarly situated as hereinabove set forth.

(7) Whether the threatened action of defendants in requiring that County employees reveal and disclose their political opinions and affiliations, newspapers, books and other publications, or which they have supported or followed, violates the constitutional rights and privileges of plaintiffs and all employees similarly situated, as hereinabove set forth.

(8) Whether the threatened action of defendants in defining in their arbitrary and uncontrolled discretion those political opinions and affiliations, and those newspapers, books, magazines or other publications which shall be orthodox or unorthodox, violates the constitutional rights and privileges of plaintiffs and all employees similarly situated, as hereinabove set forth.

(9) Whether the "Loyalty Check" is void on its face and as authoritatively construed for the reason that it is contrary to and in violation of the provisions of the Constitutions of the United States and the State of California as hereinabove alleged.

(10) Whether the "Loyalty Check" and the acts and threatened acts of defendants in connection therewith are [fol. 20] contrary to and in violation of Section 41 of the Charter of the County of Los Angeles.

(11) Whether under the provisions of the Charter including but without limitation Sections 34 (13) and 41 thereof, and the rulings and regulations of the Los Angeles Civil Service Commission made and issued in connection therewith, and the provisions of the Constitutions of the United States and the State of California as hereinabove alleged, plaintiffs and all employees similarly situated may

be required to execute said oath and affidavit as a condition of continued employment.

(12) Whether under the provisions of the Charter, including but without limitation Sections 34 (13) and 41 thereof, and the rulings and regulations of the Los Angeles Civil Service Commission made and issued in connection therewith, and the provisions of the Constitutions of the United States and the State of California as hereinabove alleged, defendants, or any of them, may impose upon plaintiffs or any employees similarly situated, any penalty or discrimination for failure or refusal to execute said oath and affidavit.

(13) Whether by reason of the provisions of the Charter, including but without limitation Sections 34 (13) and 41 thereof, and the rulings and regulations of the Los Angeles Civil Service Commission made and issued in connection therewith, and the provisions of the Constitu- [fol. 21] tions of the United States and the State of California as hereinabove alleged, any order or requirement by defendants, or by any officer or agent of Los Angeles County acting under their direction or supervision, that plaintiffs or any employees similarly situated execute said oath and affidavit is a lawful order or requirement as to plaintiffs and any employees similarly situated.

(14) Whether by reason of the provisions of the Charter, including but without limitation Sections 34 (13) and 41 thereof, and the rulings and regulations of the Los Angeles Civil Service Commission made and issued in connection therewith, and the provisions of the Constitutions of the United States and the State of California as hereinabove alleged, plaintiffs and all employees similarly situated may fail or refuse to execute said oath and affidavit without being discharged, discriminated against or otherwise penalized on account of said failure or refusal or because said failure or refusal constitutes disobedience of a lawful order of a superior.

Wherefore, plaintiffs pray:

1. For a preliminary and final injunction restraining and prohibiting defendants, and each of them, their agents, employees, successors, from,

(a) Requiring, directly or indirecty, or by any means whatsoever plaintiffs or any employee similarly situated, [fol. 22] to execute the oath and affidavit prescribed in paragraph numbered 5 of the "Loyalty Check".

(b) Discriminating with respect to hire, tenure, or any term or condition of employment, or in any way, directly or indirectly, against plaintiffs or any employee similarly situated, for refusal or failure to execute said oath and affidavit.

(c) Creating, establishing or applying, directly or indirectly, or by any means whatsoever, any presumption or inference that plaintiffs, or any employee similarly situated, are subversive, from the fact that they have at any time belonged to or directly or indirectly supported or followed any organization listed in said oath and affidavit.

(d) Requiring any plaintiff or any employee similarly situated to prove that he is not subversive and imposing on any such employee any burden of proof because of or on account of having at any time belonged to or directly or indirectly supported or followed any organization listed in said oath and affidavit.

(e) Requiring, directly or indirectly, or by any means whatsoever, that plaintiffs, or any employee similarly situated, reveal or disclose or otherwise make known to defendants their political opinions or affiliations, or the political utterances they have made or the writings or publications they have written, participated in or read.

(f) Inquiring in any way, directly or indirectly, through check of political registrations, files of agencies of the [fol. 23] County or any other government, the oath and affidavit prescribed in the "Loyalty Check," or by any means whatsoever, into the political opinions, affiliations, utterances, publications of plaintiffs or any employee similarly situated.

(g) Reporting publicly as subversives or disloyal, plaintiffs or any employee similarly situated, for or on account of failure or refusal to execute the aforesaid oath and affidavit, or any political opinion, affiliation, speech, utterance, publication of said plaintiffs or said employees.

2. For a judgment declaring that defendants may not do or require to be done the things sought to be enjoined as

prayed above, for the reason that the doing or requiring to be done of these things violates the provisions of the Charter of the County of Los Angeles and the Constitutions of the United States and of the State of California, in the respects alleged in the complaint.

3. For such other and further relief as to this Court may seem meet and just.

4. For costs of suit herein.

Gallagher, Margolis, McTernan & Tyre, by John T. McTernan, Attorneys for Plaintiffs.

[fol. 24] EXHIBIT "A" TO AMENDED COMPLAINT

EXHIBIT "A"

OFFICE OF THE COUNTY COUNSEL

1100 Hall of Records, Los Angeles

August 15, 1947.

HONORABLE BOARD OF SUPERVISORS, Fifth Floor, Hall of Records, Los Angeles 12, Calif.

Gentlemen:

Subject: LOYALTY CHECK

On April 1, 1947, the Board of Supervisors directed that the Chief Administrative Officer and the County Counsel study, prepare and recommend ways and means in which a proper investigation can be made to determine whether or not there are any Communists, avowed or otherwise, that may be employed by the County of Los Angeles, its agencies and districts.

As the result of a preliminary investigation directed towards the ascertaining of reasonable and justified procedure which will accomplish the desire of your Honorable Board, the following is recommended:

1. The County Auditor will prepare in triplicate an alphabetical list of the names of the approximately 20,000 persons on his payroll cards. Mr. J. M. Lowery, the County Auditor, has cooperated fully in this matter and agreed to furnish such lists.

2. Present one of these lists to Michael Donoghue, the Registrar of Voters, with the request that he check this list against the names of any persons who have registered as Communists at any time during the past ten years. Mr. Donoghue has heartily agreed to make this check.

3. Request the Federal Bureau of Investigation to check this list against the subversive file of the Federal Bureau of Investigation.

[fol. 24a] 4. Require all officers and employees coming under the jurisdiction of the Board of Supervisors to execute an oath of the type and character attached hereto.

5. Require such officers and employees to execute an affidavit setting forth every name that such person has ever been known by, and setting forth further that he has never at any time been a member of, or supported or contributed to, an organization advocating the over-throw of our form of government, and further declaring in such affidavit that he has never at any time been a member of, or supported or contributed to, any organization listed in the affidavit, which organizations have been mentioned in one or more of the reports of the Joint Fact Finding Committees of 1943, 1945 and 1947, on un-American Activities in California, filed and accepted by the California Legislature on the following dates: (1943) April 9, 1943, 55 Session, Senate Journal, page 1145; (1945) June 14, 1945, 56th Session, Senate Journal, page 3856; (1947) March 24, 1946, 57th Session, Assembly Journal, page 20.

With reference to the treatment which has been given to the several reports of the Joint Fact Finding Committee, appointed by the California Legislature, we wish to make it clear that the mentioning of the name of an organization in these reports does not necessarily mean and is not intended to convey the implication that they are subversive or Communistic or have ever been engaged in any subversive or Communistic activities.

Part of the technique of subversively inclined Communists is to secretly infiltrate organizations with the purpose of eventually achieving some subversive purpose. In the meantime, rank and file members often are enrolled wholly innocent of subversive possibilities but attracted to the or-

ganization by its publicly alleged purposes which have every appearance of being patriotic and worthy.

A careful reading of the Tenney reports will disclose that [fol. 24b] there are instances in the reports where organizations are named, but it was not claimed by the Fact Finding Committee that such organizations were in themselves subversive, but that subversive or Communistic organizations were endeavoring to place such organizations under their influence. We believe, however, that in ferreting our Communism, it is a practical approach to start with the organizations which are known to exist for the purpose of overthrowing our government, or are known to be subversive or Commu-stic, and then give careful consideration to such other organizations as the reports of the Joint Fact-Finding Committee of the California Legislature indicates might have come under some subversive or Communistic influence.

By way of summary, it is to be emphasized that the organizations set forth in the list, which is part of the affidavit, that by their designation there it is not intended to infer that they are necessarily subversive or Communistic, as of course, we have no facilities for knowing their true character. For this reason each employee by indicating that he is or was a member, should understand that he will be given ample opportunity to indicate that the organization was not subversive or communistically inclined or that he personally was not an advocate of subversive or Communistic doctrines.

6. Appoint a committee consisting of the Chief Administrative Officer, the Sheriff, the Secretary of the Civil Service Commission, and the County Counsel, to meet, coordinate, and supervise the loyalty check program, and keeping its information confidential at all times, except when reports are made as outlined in paragraph 8.

7. Channel all information and reports to this committee, which shall keep all information confidential. Authorize the committee to use the facilities of the Sheriff's office for the purpose of seeking additional information relative to specific cases.

[fol. 24c] 8. Require the committee to report periodically to the Board of Supervisors if any known subversively inclined persons are located with a recommendation by the

committee in connection with each particular person in question.

Very truly yours, Wayne Allen, Chief Administrative Officer. Harold W. Kennedy, County Counsel.

[fol. 25] OATH AND AFFIDAVIT

Department .....

A. OATH OF OFFICE OR EMPLOYMENT

I, ..., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of California, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office or employment on which I am about to enter or am now engaged. So Help Me God.

B. AFFIDAVIT RE SUBVERSIVE ACTIVITY

I do further swear (or affirm) that I do not advocate, nor am I now a member, nor have I been since December 7, 1941, a member of any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles, by force or violence, except those specified as follows: ..... and that during such time as I am an officer or employee of the County of Los Angeles, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles by force or violence.

C. AFFIDAVIT RE ALIASES

I do further swear (or affirm) that I have never used or been known by any names other than those listed as follows: .....

[fol. 25a] D. MEMBERSHIP IN ORGANIZATIONS

I do further swear (or affirm) that I have never been a member of, or directly or indirectly supported or followed any of the hereinafter listed organizations, except those which I indicate by an X mark.

NAME	VOLUME	PAGE
Abraham Lincoln Brigade	43	140
Academic and Civil Rights Council of California	43	97
	47	103
After School Clubs	43	300
Agitprop	43	35
American Artists Congress	47	82
America for Americans	43	280
American Comm. for a Free Indonesia	47	56
American Comm. for Democracy and Intellectual Freedom	47	202
American Comm. for Protection of the Foreign Born	47	452
		202
		219
American Comm. to Save Refugees	47	45
Americans Communications Assn.	43	141
	47	72
		163
		210
American Communist Party	43	116
American Council on Soviet Relations	47	202
American Federation for Political Unity	43	96
American Friends of the Chinese People	47	45
American Guard	43	259
American League Against War and Fascism	43	93
American League for Peace and Democracy	43	135
	47	202

[fol. 25b]

American League of Christian Women	43	259
American Peace Mobilization	43	96
American Russian Institute	47	88
		103
American Society for Technical Aid for Spain	47	313
American Student Union	43	115
American Veterans Comm.	47	230

NAME	VOLUME	PAGE
American Writers Congress	45	122
American Youth Congress	43	98
American Writers School	47	70
American Youth for Democracy	47	21
Anti-Axis Comm.	43	345
Anti-Hearst Examiner	43	119
Anti-Nazi League	43	42
Anti-Nazie League of Hollywood	43	96
Anti-ROTC Committee	43	98
Arcos Limited	43	98
Artist Front to Win the War	47	191
Arts Advisory Council	47	94
Authors League	47	286
Ballila	43	301
Bay Area Council Against Discrimination	47	209
California Conference for Democratic Action	47	170
California Labor School	47	47
California Youth Legislature	43	96
	47	209
Centro Anti-Communists	43	201
China Aid Council of American League for Peace and Democracy	47	313
Citizens Committee for Better Education	47	56
Citizens Comm. for Defense of Mexican-American Youth	43	216

[fol. 25c]

Citizens Comm. to Free Earl Browder	47	213
Citizens Comm. to Support Labors Right	47	187
Citizens No Foreign Wars Coalition	43	251
Civil Rights Congress	47	55
Civil Rights Council for Northern California	47	209
Comintern	43	39
Comm. for Boycott Against Japanese Aggression	47	202
Comm. for Defense of Mexican-American Youth	47	97
Comm. for Support of S. W. Garson	47	210
Comm. Protesting Attacks Against the Abraham Lincoln Brigade	47	210
Comm. to Defend America by Keeping Out of War	47	202

NAME	VOLUME	PAGE
Communist International	43	93
Communist Party's Little Theatre	47	73
Communist Workers School	47	67
Communist Political Assn.	47	8
Conference for Democratic Action	47	247
Consumers National Federation	47	210
Contemporary Theatre	43	130
Co-ordinating Commission to Lift Embargo (To Spain)	47	202
		210
Council for Pan American Democracy	47	210
Cultural and Professional Projects Assn.	43	149
Congress of Mexican and Spanish-Mexican Peoples of U. S.	47	210
Daily Worker	43	98
Democratic Youth Federation	43	161
Elizabeth Curley Flynn Club	47	35
Elizalde Anti-Discrimination Comm.	47	55
Emergency Comm. to Aid Spain	47	202
[fol. 25d]		
Emergency Trade Union Conference to Aid Spanish Democracy	47	202
Ex Combattanti Society	43	287
Farmer Labor Party	43	98
Federation of Architects, Engineers, Chemists and Technicians	43	135
	47	89
Field Workers School	43	87
First Congress of Mexican and Spanish-American Peoples of U. S.	47	45
Friends of Soviet Russia	47	313
Friends of Soviet Union	43	119
	47	313
Ge[illegible] American Bund	43	383
Greater New York Emergency Conference on Inalienable Rights	47	210
Harry Bridges Defense Comm.	47	202
Hold the Price Line Comm.	47	55
Hollywood Anti Nazi League	43	136
	47	70
Hollywood Cultural Commission	43	148

NAME	VOLUME	PAGE
Hollywood Community Radio Group	47	179
Hollywood Independent Citizens Comm. of Arts, Sciences and Professions	47	33
Hollywood League for Democratic Action	47	33
Hollywood Theatre Alliance	43	91
Hollywood Writers Mobilization	47	34
Humanist Society of Friends	43	119
Independent Citizens Comm. of Arts, Sciences and Professions	47	227

[fol. 25e]

International Labor Defense	43	98
	47	189
International Red Aid	47	214
International Workers Order	47	94
Jewish Peoples Committee	47	45
John Reed Clubs	47	68
Joint Committee for Trade Union Rights	47	202
Joint Anti-Fascists Refugee Committee	47	45
League Against War and Fascism	47	70
League for Democratic Action	47	70
League for Peace and Democracy	43	91
League for American Writers	43	149
League for Struggle for Negro Rights	47	115
League of Women Shoppers	43	125
	47	309
League to Save America First	43	258
Los Angeles County Political Commission	43	159
Los Angeles County Trade Union Commission	43	162
Mooney Defense Commission	43	91
Marine Cooks and Stewards Union		
Maritime Federation of the Pacific		
Mobilization for Democracy	47	45
Motion Picture Cooperative Buyers Guild	43	108
Motion Picture Democratic Committee	43	95
		161
	47	170
National Citizens Political Action Committee	47	236
National Committee to Abolish the Poll Tax	47	45

NAME	VOLUME	PAGE
National Council on Soviet American Friendship	47	219
National Emergency Conference	47	210
[fol. 25f]		
National Federation for Constitutional Liberties	47	219
National Negro Women's Council	47	45
National Negro Congress	43	185
	47	163
National Students League	43	99
New Masses	43	98
New Theatre League	43	138
North American Commission to Aid Spanish Democracy	43	140
	47	190
Pen and Hammer Club	43	91
Peoples Council of America	43	91
Peoples Front	43	100
Progressive Comm. to Rebuild the American Labor Party	47	210
Refugee Scholarship and Peace Comm.	47	202
Second Annual California Model Legislature	43	91
Simon J. Lubin Society	43	86
	47	255
Social Problems Club	43	99
Spanish Relief Committee	43	91
Student Rights Assn.	43	99
United Farmers League	43	37
United Federal Workers	47	218
Western Workers	48	70
	47	36
Workers Alliance	43	135
	47	70
World Committee Against War	43	93
Workers School	47	70
Young Communist League	43	63
	47	21

[fol. 25g]

NAME	VOLUME	PAGE
The Young Pioneers	43	66

——, ——.

Subscribed and sworn to before me this — day of ——, 1947. J. P. Moroney, County Clerk, by —— ——, Deputy.

[fol. 26] [File endorsement omitted.]

[fol. 27] In Superior Court of Los Angeles County

Demurrer to Plaintiff's Amended Complaint—Filed February 10, 1948

Come now the defendants in the above entitled action and demur, both generally and specially, to plaintiffs' amended complaint on the following grounds, to wit:

I

Plaintiffs' first cause of action does not state facts sufficient to constitute a cause of action.

II

That the first cause of action, and more particularly paragraph VII thereof is uncertain in the following respects, to wit:

(1) It is uncertain whether any of the threats therein, or any of the actions alleged to be taken, are or will be the acts of the defendant members of the Loyalty Check Committee as individuals, or whether the alleged threats are or will be that of the Loyalty Check Committee itself acting in its official capacity.

(2) Said paragraph VII is uncertain in that it does not appear therein what the factual basis is for the conclusion that threats have been or will be made, or that plaintiff will be caused to be discharged or otherwise penalized.

(3) Said paragraph VII is uncertain because it does not [fol. 28] appear therefrom whether the acts or threats com-

plained of are within or without the authority of the Loyalty Check Committee as described by the order of the Board of Supervisors dated August 26, 1947.

III

The first cause of action, and particularly paragraph VIII thereof, is uncertain in the following respects, to wit:

(1) It is uncertain whether any of the threats alleged therein, or any of the actions alleged to be taken, are or will be the acts of the defendant members of the Loyalty Check Committee as individuals, or whether the alleged threats and acts are or will be that of the Loyalty Check Committee itself, acting in its official capacity.

(2) Paragraph VIII is uncertain as it does not appear therefrom what the factual basis is for the conclusion that defendants "will presume that employees . . . who have ever belonged to, or directly or indirectly supported or followed any of the organizations or publications listed in said oath and affidavit are subversive . . .", and will then take the action described in paragraphs (a), (b) and (c) of said paragraph VIII.

(3) Paragraph VIII and particularly subparagraph (b) thereof, is uncertain in that it does not appear therefrom what the factual basis is for the conclusion that employees will be called upon to carry the burden of proving to said [fol. 29] defendants that they are not subversive and disloyal.

(4) Paragraph VIII, and particularly subparagraph (c) thereof, is uncertain in that it does not appear from said paragraph what factual basis exists for the conclusion that the defendants will reduce, remove or otherwise discriminate against employees for failure to prove that they are not subversive and disloyal.

(5) Said paragraph VIII is uncertain in its entirety because it is impossible to ascertain therefrom whether the threatened acts complained of are within or without the authority of the Loyalty Check Committee, as described by the order of the Board of Supervisors, dated August 26, 1947.

IV

The first cause of action, and particularly paragraph IX thereof, is uncertain in the following facts, to wit:

(1) It is uncertain whether any of the threats alleged therein, or any of the acts alleged to be taken, are or will be the acts of the defendant members of the Loyalty Check Committee as individuals, or whether the alleged threats and acts are or will be that of the Loyalty Check Committee itself, acting in its official capacity.

(2) Paragraph IX is uncertain as it does not appear [fol. 30] therefrom what the factual basis is for any of the conclusions contained in sub-paragraphs (1), (2), (3), (4), (5) and (6) of paragraph IX of plaintiffs' complaint.

(3) Said paragraph IX, and the whole thereof, is further uncertain in its entirety because it is impossible to ascertain therefrom whether the threatened acts complained of are within or without the authority of the Loyalty Check Committee as described by the order of the Board of Supervisors dated August 26, 1947.

V

The first cause of action, and particularly paragraph X thereof, is uncertain in the following respects, to wit:

(1) It is uncertain whether any of the threats alleged therein, or any of the actions alleged to be taken are or will be the acts of the defendant members of the Loyalty Check Committee as individuals, or whether the alleged threats and acts are or will be that of the Loyalty Check Committee itself acting in its official capacity.

(2) Paragraph X is uncertain as it does not appear therefrom what the factual basis is for any of the conclusions contained in sub-paragraphs (1), (2) and (3) of said paragraph.

(3) Said paragraph X is further uncertain because it is impossible to ascertain therefrom whether the threatened acts complained of are within or without the authority of [fol. 31] the Loyalty Check Committee as described by the order of the Board of Supervisors dated August 26, 1947.

VI

Plaintiffs' first cause of action, and particularly paragraph XI thereof, is uncertain in the following respects, to wit:

(1) It cannot be determined therefrom whether the "acts of defendants" referred to therein is a reference to acts of the Board of Supervisors or members of the Loyalty Check Committee, or all of them, or any number of them.

(2) Paragraph XI is uncertain in that it cannot be ascertained therefrom what the factual basis is for the conclusion that defendants will discriminate against plaintiffs and all employees similarly situated because of their political opinions or affiliations.

(3) Paragraph XI is further uncertain as it is impossible to determine from the conclusions of the plaintiff whether said acts threatened or otherwise alleged generally in paragraph XI are within or without the scope of the authority of the Loyalty Check Committee as set forth in the order of the Board of Supervisors adopted August 26, 1947.

VII

Paragraph XII is uncertain for all of the reasons that paragraphs VII, VIII, IX and X of plaintiffs' first cause [fol. 32] of action are uncertain.

VIII

Paragraph XIII is uncertain for all of the reasons that paragraphs VII, VIII, IX and X of plaintiffs' first cause of action are uncertain.

IX

Paragraph XIV is uncertain for all of the reasons that paragraphs VII, VIII, IX and X of plaintiffs' first cause of action are uncertain.

X

Plaintiffs' first cause of action, and particularly paragraph XV thereof, is uncertain as it cannot be ascertained therefrom what acts by the defendants are without authority and unlawful.

XI

That paragraph XVI is uncertain for all of the reasons that paragraphs VII, VIII, IX and X of plaintiffs' first cause of action are uncertain.

XII

That plaintiffs' first cause of action, and particularly paragraph XVII thereof, is uncertain in the following respects, to wit:

(1) It cannot be determined therefrom whether the "acts of the defendants" referred to therein is a reference to the acts of the Board of Supervisors or members of the Loyalty Check Committee, or of all of them, or any num-
[fol. 33] ber of them.

(2) Said paragraph is uncertain for the reason that it cannot be determined therefrom what acts of the defendants will discriminate against plaintiffs.

(3) Paragraph XVII is uncertain as it does not appear therefrom what the factual basis is for the conclusion that the acts of the defendants will result in a discrimination against the plaintiffs.

(4) Paragraph XVII is uncertain in that it does not appear therefrom what the factual basis is for the conclusion that the defendants will assess penalties against plaintiffs without ascribing any ascertainable standard therefor.

(5) Paragraph XVII is further uncertain in that it is impossible to determine from the conclusions of the plaintiffs whether said acts threatened or otherwise alleged generally in said paragraph will be within or without the scope of the Loyalty Check Committee as set forth in the order of the Board of Supervisors adopted August 26, 1947.

XIII

Plaintiffs' first cause of action, and particularly paragraph XVIII, is uncertain in that it does not appear therefrom or from paragraph VIII what the factual basis is for the conclusion that the acts of defendants, Wayne Allen, Harold W. Kennedy, Eugene W. Biscailuz, and Clifford

N. Amsden establish a presumption that "any County em-
[fol. 34] ployee who has ever belonged to or directly or indirectly supported or followed any organization listed in the oath and affidavit is now subversive".

XIV

That plaintiffs' first cause of action, and particularly paragraph XX, is uncertain in the following respects, to wit:

(1) It cannot be determined therefrom what specific acts and threatened acts of the defendants will result in irreparable damage to plaintiffs.

(2) It cannot be determined therefrom whether the plaintiffs are referring to acts of the Board of Supervisors, or members of the Loyalty Check Committee, or all of them, or any of them.

(3) Said paragraph XX is further uncertain as it is impossible to determine from the conclusions of the plaintiffs whether said acts threatened or otherwise alleged generally in paragraph XX are within or without the scope of the Loyalty Check Committee as set forth in the order of the Board of Supervisors adopted August 26, 1947.

(4) Paragraph XX is uncertain as it does not appear therefrom what the factual basis is for the conclusion that plaintiffs will be publicly stigmatized as subversive and disloyal by reason of political opinions and beliefs.

(5) Paragraph XX is uncertain as it does not appear
[fol. 35] therefrom what the factual basis is for the conclusion that plaintiffs will be required to disclose to defendants their opinions and affiliations under pain of penalty which may include discharge.

XV

Plaintiffs' first cause of action in its entirety is uncertain in that plaintiffs allege they will be presumed subversive and disloyal, will be stigmatized as subversive and disloyal, and will be discharged, discriminated against and assessed penalties, and must renounce and forego their political beliefs and opinions, but nowhere in said complaint do plaintiffs allege that they have directly or indirectly supported or been members of any of the organizations listed in

the loyalty check order as pleaded by reference in plaintiffs' amended complaint, nor do they allege that they have ever or now do advocate the overthrow of government by force or violence.

XVI

That the first cause of action is ambiguous for the same reasons that it is uncertain.

XVII

That the first cause of action is unintelligible for the same reasons that it is uncertain.

Second Cause of Action

Come now defendants and demur both generally and specially to plaintiffs' second cause of action on the follow-
[fol. 36] ing grounds, to wit:

I

That plaintiffs' second cause of action fails to state facts sufficient to constitute a cause of action.

II

That plaintiffs' second cause of action, and particularly paragraph I thereof, is uncertain as the same incorporates paragraphs VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII and XX of plaintiffs' first cause of action as a part thereof and that said paragraphs incorporated are uncertain for all of the reasons as stated in defendants' demurrer to plaintiffs' first cause of action.

III

Plaintiffs' second cause of action, and particularly paragraph II thereof, is uncertain for the following reasons, to wit:

(1) Paragraph II, and particularly sub-paragraphs (2), (3), (4), (5), (6), (7), and (8) are uncertain for the reason that apart from the conclusions of plaintiffs, it cannot be ascertained therefrom what the factual basis is for any of the generalizations therein contained with reference to threatened action by defendants and by virtue of which a controversy is alleged to exist.

(2) Paragraph II, and particularly sub-paragraphs (1), (2), (3), (4), (5), (6), (7), (8), and (10) thereof are [fol. 37] uncertain in that it cannot be determined therefrom whether the allegation "defendants" referred to therein is a reference to acts of the members of the Board of Supervisors or members of the Loyalty Check Committee, or all of them, or any number of them, and further whether said "defendants" are acting as individuals or in their official capacity.

(3) Paragraph II, and particularly sub-paragraphs (1), (2), (3), (4), (5), (6), (7), (8), and (10) thereof are uncertain in that it is impossible to ascertain if any of the defendants are members of the Loyalty Check Committee meeting and acting as the Loyalty Check Committee, whether their acts are within or without the scope and authority of the Loyalty Check order by the Board of Supervisors dated August 26, 1947.

(4) Sub-paragraph (11) of paragraph II is uncertain for the reason that it cannot be ascertained therefrom what the factual basis is for the conclusion that execution of the oath and affidavit is "a condition of continued employment."

(5) Sub-paragraph 12 of paragraph II is uncertain in that it cannot be ascertained therefrom what the factual basis is for the conclusion of plaintiffs that defendants may impose upon plaintiffs any penalty or discrimination for failure or refusal to execute said *said* oath and affidavit.

[fol. 38] (6) Sub-paragraph 14 of paragraph II is uncertain in that it cannot be ascertained therefrom whether plaintiffs intend to and will hereafter fail and refuse to execute the said oath and affidavit.

IV

Plaintiffs' second cause of action is uncertain in that they allege that a controversy between plaintiffs and defendants exists but they do not allege any facts with respect to direct or indirect support or membership in any of the organizations listed in the Loyalty Check order as pleaded by reference in plaintiffs' amended complaint, nor do they allege that they have ever or now do advocate the overthrow of government by force and violence.

V

That plaintiffs' second cause of action is ambiguous for the same reasons that it is uncertain.

VI

That plaintiffs' second cause of action is unintelligible for the same reasons that it is uncertain.

Wherefore, defendants pray that the demurrer be sustained without leave to amend; that plaintiffs take nothing by this action; that the same be dismissed; that defendants have judgment against plaintiffs for defendants' costs incurred herein, and for such other and further relief as to [fol. 39] the Court may seem meet and proper in the circumstances.

Harold W. Kennedy, County Counsel, and Gerald G. Kelly, Deputy County Counsel, and Robert L. Trapp, Deputy County Counsel, Attorney- for the Defendants.

We, Harold W. Kennedy, County Counsel, Gerald G. Kelly, Deputy County Counsel, and Robert L. Trapp, Deputy County Counsel, attorneys for the above-named defendants, do hereby certify that the above demurrer to plaintiffs' complaint is not interposed for the purpose of delay and that in our opinion the issues therein raised are well taken in law.

Harold W. Kennedy, County Counsel, and Gerald G. Kelly, Deputy County Counsel, and Robert L. Trapp, Deputy County Counsel, Attorneys for the Defendants.

[File endorsement omitted.]

[fol. 40] IN SUPERIOR COURT OF LOS ANGELES COUNTY

ORDER SUSTAINING DEMURRER

March 5, 1948 Department 34

(Entered March 12, 1948)

Honorable Clarence M. Hanson, Judge, Presiding.

534228

(Minute Order)

Demurrer to amended complaint having been heretofore submitted is sustained without leave to amend. The restraining order is discharged.

[fol. 41] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

No. 534,228

HELEN PARKER, et al., Plaintiffs,

vs.

COUNTY OF LOS ANGELES, et al., Defendants

JUDGMENT OF DISMISSAL

In this action the defendants County of Los Angeles, William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, and each of them as members of the Board of Supervisors of said County, Wayne Allen, as Chief Administrative Officer of said County, Harold W. Kennedy, as County Counsel of said County, Eugene W. Biscailuz, as sheriff of said County, Charles C. Mack, G. H. Newlan and T. J. O'Keefe, and each of them as members of the Civil Service Commission of said County, Clifford Amsden, as Secretary and Chief Examiner of said Commission and Michael Donoghue, as Registrar of Voters of said County, having demurred to plaintiffs' amended complaint, the Court being duly advised in the premises and the Court having sustained the demurrer without leave to amend by an order duly made,

Now, therefore, by virtue of the law in the premises aforesaid, it is

Ordered, adjudged and decreed that the above entitle-[fol. 42] action be and the same is hereby dismissed, and that the defendants have and recover from the plaintiffs herein their costs and disbursements incurred in this action, in the sum of $11.40.

Dated this 8 day of March, 1948.

Clarence M. Hanson, Judge of the Superior Court.

(Endorsed.) Filed Mar. 8, 1948. Earl Lippold, County Clerk. By J. E. Shaw, Deputy.

Entered Mar. 9, 1948, Book 1894, Page 205. By C. F. Escapite, Deputy.

[fol. 43] In Superior Court of Los Angeles County

Memorandum Ruling—March 5, 1948

The primary question presented, viewed in its broadest aspect, is whether the Board of Supervisors may require the officers and employees under its jurisdiction (1) to take an oath of allegiance to the federal and state constitutions, and the laws of California as against all enemies of the United States and the State, and (2) require such officers and employees to answer upon their oath certain questions that touch upon the oath.

The plaintiff in cause No. 534177 is a civil service employee of the County of Los Angeles. She alleges in her amended complaint that she is *not* a member of the Communist Party or of any of the organizations listed on the questionnaire submitted to her. She avers, however, that the requirement thereby sought to be imposed upon her, i.e., that she take the oath in the form tendered and respond under oath to the questionnaire submitted, violates her constitutional rights as an American citizen.

The fifteen plaintiffs in cause No. 534288 allege in their amended complaint that they are civil service employees of the County of Los Angeles. They likewise aver that the requirement sought to be imposed upon them, i.e., that they take the oath in the form tendered and respond under oath [fol. 44] to the questionnaire submitted, violates their constitutional rights as American citizens.

The form of the oath here in question, a part of the questionnaire, reads as follows:

"A. . . . I, —— ——, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of California, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office or employment on which I am about to enter or am now engaged. So help me God."

The other portions of the questionnaire, except for the organizations listed thereon, read as follows:

"B. Affidavit Re Subversive Activity

I do further swear (or affirm) that I do not advocate, nor am I now a member, nor have I been since December 7, 1941, a member of any political party or organization that advocates the over-throw of the Government of the United States, or State of California, or County of Los Angeles, by violence, except those specified as follows: .....
and that during such time as I am an officer or employee [fol. 45] of the County of Los Angeles, I will not advocate nor become a member of any political party or organization that advocates the over-throw of the Government of the United States, or State of California, or County of Los Angeles, by force or violence.

C. Affidavit Re Aliases

I do further swear (or affirm) that I have never used or been known by any names other than those listed as follows: .....

D. Membership in Organizations

I do further swear (or affirm) that I have never been a member of, or directly or indirectly supported or followed any of the hereinafter listed organizations, except those which I indicate by an X mark.

* * * * * * *

—— ——.

Subscribed and sworn" etc.

Before proceeding further it should be stated that when the demurrers to the original complaints in these causes came on for hearing before Judge Swain, he not only sustained the demurrers and denied a preliminary injunction but he expressed his views in a written opinion as well. In that opinion he stated the oath was entirely proper and the questionnaire likewise. The amended complaints now submitted to me to which demurrers have been filed allege [fol. 46] certain new matters and, moreover, some new and additional authorities are now submitted which were not given to Judge Swain. Accordingly, it seems proper and advisable to submit my own views upon the two cases before me.

Without narrating in detail the allegations of the two amended complaints it will suffice to say that they allege, in almost every conceivable way, that the defendant board and its agents are without power to impose the requirements in question; that the manner, method and application of the power, if power there be, is without legal sanction and violative of the statutory and constitutional rights of the plaintiffs and all employees of the defendant county required to submit to the questionnaire and take the oath in question.

In this State it is well established that the Board of Supervisors under our Constitution, the state laws and the Charter of the County, exercise the powers of the county, except as it is otherwise specifically limited. The Board is vested with the power to appoint all county officers and employees, not otherwise provided for by the Charter. However, with respect to the classified service, the appointments must be made from the so-called eligible civil service list.

The Civil Service provisions of the Charter authorize the Civil Service Commission to prescribe, amend and enforce rules for the classified service, to make investigations con- [fol. 47] cerning the enforcement and effect of its rules, and the efficiency of the service. Moreover, the commission is empowered to reject candidates who wish to be placed upon civil service rolls where they fail to measure to up the reasonable requirements of the commission and likewise it is authorized to drop persons who have attained the eligible list, for like reasons.

In case the appointing power wishes to discharge a civil

service employee the reasons therefor must be given and, thereupon, if the employee so desires he is entitled to a hearing before the commission. If the commission finds that the reasons are not sufficient, the discharge is void, despite anything the appointing power can do about it.

From what has so far been said, it is self-evident that neither the Board nor its agents can discharge a civil service employee for any cause that the Civil Service Commission finds insufficient. Accordingly, if in the view of the Board of Supervisors, or its agents as the appointing power, a civil service employee should be discharged on the sole ground that the employee is "subversive", the discharge or attempt to discharge on that ground is of no effect if, on hearing, the Commission holds otherwise.

What then are the powers of the Board and its agents with respect to laying a *good or bad* foundation for a discharge of an employee? Clearly, the appointing power—[fol. 48] whether it be private or public—is entitled, subject to a review by the Commission, to discharge for cause or no cause, and, as a corollary, to investigate as it sees fit as a basis for such cause, save and except as it is restricted by law.

Section 41 of the Charter provides that "no person in the classified service . . . shall be appointed, or reduced or removed or in any way favored or discriminated against because of his political or religious opinions or affiliations". Aside from this restriction there are no restrictions by the Charter or by law on the appointing power of the board or its agents in appointing or discharging civil service employees, except as noted.

It seems self-evident, then, that aside from any restraining constitutional provision, the Board of Supervisors itself or through its agents duly authorized may investigate to its heart's content the character, the antecedents, the viewpoints and the affiliations of any of its employees, including those in the civil service, so long as the investigation does not touch upon the political or religious opinions or affiliations of the employee. Moreover, it would seem to follow that so long as the Board does not impinge upon these restrictions, it may, like any private employer, demand of its employee an oath, if it chooses, and a response to a questionnaire as a basis in whole or in part for his discharge. The fact that a person is on the civil service rolls does not

[fol. 49] insulate him from the lawful actions of the appointing power or enable him to restrict them, except for the rights specifically granted to him by the provisions of the Charter. Like any private employer the county may question its employees *and demand* unquestioned loyalty, *in the manner it lays it down*, except as restricted by law. To be sure, a private employer, or a public employer, may now and then demand more than is necessary, in the view of individuals concerned or of the courts, but that fact, if it be a fact, is not a ground for the slightest interference on the part of the courts. (United Public Workers v. Mitchell, 1947, 91 L. Ed. 509.)

There remains then to consider whether the action, or the alleged threatened action, of the Board or its agents, violates the rights of the plaintiffs under the federal or the state constitutions. The plaintiffs contend that their rights in this respect are violated in view of the provisions of the First and Fourteenth Amendments of the federal Constitution and the cognate provisions of our state constitution.

Shortly stated, the plaintiffs contend that the action of the Board and its agents in requiring the employees to take the oath propounded and to give answer to the questionnaire, under oath, violates an employee's rights guaranteed to him under the federal and the state constitutions. These rights, as set forth by the plaintiffs, are as follows:

[fol. 50] (1) "Every citizen may freely speak . . . his sentiments on all subjects, being responsible for the abuse of that right. . . ." (California Constitution, Article I, Section 9.)

(2) "The people shall have the right to freely assemble together to consult for the common good, to instruct their Representatives, and to petition the Legislature for redress of grievances." (Calif. Const., Art. I, Sec. 10.)

(3) "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (14th Amendment, U. S. Constitution.)

In viewing the constitutional mantle thrown around an individual it is important to remember that the mantle is

a *safeguard*, not *absolute*, but *relative* and *qualified*. Our federal and state constitutional provisions, which guarantee freedom of speech and of opinion, freedom of the press, freedom of assembly, are not licenses to do completely as one chooses, without regard to the other fellow, who possesses exactly the same liberties. When one purports to pursue the liberties granted by the constitution, he needs to remember that the other fellow has equal liberties and, [fol. 51] what is more, he has the liberty to refuse to listen to another's speech or opinion and the right to refuse to yield to him his own right of assembly. Conceivably, a person may be of the opinion that it is entirely proper to drive through a stop light, or on city streets at 80 miles an hour in violation of an ordinance, but even so, setting up constitutional provisions as a defense will prove ill-advised. So, too, one may believe that the 14th Amendment is a defense to acts that sabotage the Government or are subversive to it, but one will quickly find that the constitutional provision against treason is not cut down or modified, in the least, by the First Amendment or any other provision of the federal or state constitutions.

In what manner, then, do the requirements as laid down by the Board, or as applied by its agents, impinge on the constitutional rights of the plaintiffs or any other officer or employee subject to the general jurisdiction of the Board? Some of the plaintiffs, but not all of them, do say that they have no objection to an oath that would require them to support the constitution, federal and state, but that the oath in question goes further and, consequently, violates their constitutional rights. The oath, it is true, calls upon the employee not only to support the constitution, state and federal, but to abjure enemies of the Government, both domestic and foreign, but even if that be true, as it is, what [fol. 52] is wrong with that in these United States? Moreover, where is the constitutional provision which directly or indirectly prohibits the Board from demanding that an employee subscribe to the oath? The answer is, there is none, and therefore no more need be said on that subject.

We come next to the questionnaire. It requires that the employee, aside from taking the oath submitted, answer under oath (1) whether or not he advocates the overthrow of the Government and whether or not, since December 1, 1941, he has been a member of any political party or organization that advocates the overthrow of the Government by

force or violence; (2) the name or names which he has used or been known by; (3) whether or not he has been a member of or directly or indirectly supported any of the organizations listed on the questionnaire.

With respect to these particular questions in the questionnaire, the plaintiffs contend they violate their constitutional rights, in that, whether they do or do not personally advocate the overthrow of the Government by force or violence, or belong or do not belong to organizations with such objectives, the provisions of the two constitutions sustain them in their refusal to answer. This is the crux of the argument of the plaintiffs in this aspect of the case. Accordingly, we may now proceed at once to a determination of the issue thus made.

A year ago the Supreme Court of the United States an- [fol. 53] swered these identical contentions in the case of United Public Workers v. Mitchell, 91 L. Ed. 509. Accordingly, we may now well turn to that decision for the light it throws on the very similar problem which is posed in the case before us. In that case, *problem which is posed in the case before us. In that case,* instituted by civil service employees, as is the case here, it was contended that the so-called federal Hatch Act, in prohibiting federal classified civil service employees from taking "any active part in political management or in political campaigns", violated their constitutional rights in that it prohibited them from doing the very thing which an ordinary citizen could do with impunity. Accordingly, in that case as here, the plaintiffs sought declaratory relief and an injunction. In holding that the Act was constitutional, the court pointed out that as early as 1882 the court had held that it was entirely proper for Congress to prohibit party activity by federal employees in the classified service. The court said: "The conviction that an actively partisan governmental personnel threatens good administration has deepened since Ex Parte Curtis (106 U. S. 371 (1882)) . . . Congress and the President are responsible for an efficient public service. If, in their judgment, efficiency may be best obtained by prohibiting active participation by classified employees in politics as party officers or workers, we see no constitutional objection. . . . To declare that the present supposed evils [fol. 54] of political activity are beyond the power of Congress to redress would leave the Nation impotent to deal

with what many sincere men believe is a material threat to the democratic system.

". . . The determination of the extent to which political activities of government employees shall be regulated lies primarily with Congress. Courts will interfere only when such regulation passes beyond the general existing conception of governmental power. . . .

"When actions of civil servants in the judgment of Congress menace the integrity and the competency of the service, legislation to forestall such danger and adequate to maintain its usefulness is required. The Hatch Act is the answer of Congress to this need. We cannot say with such a background that those restrictions are unconstitutional."

As far back as in 1891 the Mayor of New Bedford, Massachusetts, discharged a policeman for engaging in political activities contrary to an ordinance or rule of the city. The policeman thereupon sued to regain his job on the theory that the ordinance or rule violated his constitutional rights to express his political opinions. In reply to the contention the late Justice Holmes writing the opinion for the court in McAuliffe v. New Bedford, 155 Mass. 216, said:

> "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a [fol. 55] policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional rights of free speech as well as of idleness by the emplied terms of his contract. The servant cannot complain, as he takes the employment on the terms which are offered him. On the same principle the city may impose any reasonable condition upon holding offices within its control. . . ."

In Chrystal v. Police Commission, 33 Cal. App. 2d 564, it is said:

> "There is nothing startling in the conception that a public servant's right to retain in his office or employment should depend on his willingness to forego his constitutional rights and privileges to the extent that the exercise of such rights and privileges may be inconsistent with the performance of the duties of his office or employment."

In view of the decisions just quoted and especially that of the Supreme Court of the United States, it seems clear that the acts of the defendant Board and its agents, whether they go to the extent claimed by the plaintiffs or not, are within the scope of the power of the Board and are in no sense unconstitutional. Whether the appointing power will or will not discharge employees as claimed by the plaintiffs, for causes of the character enumerated, and whether the Civil Service Commission will uphold such discharges, [fol. 56] if any, on such causes, are not matters upon which this Court may speculate or adjudicate at this time. As no cause of action is stated by the complaints in either case, the demurrers thereto are sustained without leave to amend and the restraining orders heretofore issued are discharged.

Dated: March 5, 1948.

Clarence M. Hanson, Judge of the Superior Court.

[File endorsement omitted.]

[fol. 57] IN SUPERIOR COURT OF LOS ANGELES COUNTY

NOTICE OF ENTRY OF JUDGMENT—March 10, 1948

To the plaintiffs and to their attorneys, Messrs. Gallagher, Margolis, McTernan & Tyre, Kenny & Cohn, and Charles J. Katz:

You, and each of you, will please take notice that judgment of dismissal as to all defendants in the above entitled action was entered by the Clerk of the Superior Court on the 9th day of March, 1948, in Book 1894, at Page 205 of Judgments.

Dated this 9th day of March, 1948.

Harold W. Kennedy, County Counsel, by Gerald G. Kelly, Deputy County Counsel, by Robert L. Trapp, Deputy County Counsel, Attorneys for Defendants.

[Title of Court and Cause]

No. 534228

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Elsa Ruth Randall, being first duly sworn, deposes and [fol. 58] says:

That she is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that her business address is 1100 Hall of Records, City of Los Angeles, County of Los Angeles, State of California;

That on the 10th day of March, 1949, she served the attached Notice of Entry of Judgment upon the attorneys for the plaintiffs by depositing a copy thereof, inclosed in a sealed envelope with postage thereon fully prepaid, in the United States postoffice mail box at Los Angeles, California, addressed as follows: Gallagher, Margolis, McTernan & Tyre, Kenny & Cohen, and Charles J. Katz, Board of Trade Building, 111 W. 7th St., Los Angeles, California, and that the person on whom said service was made have their office at a place where there is a delivery service by mail, and that there is a regular comunication by mail between the place of mailing and the place so addressed.

Elsa Ruth Randall.

Subscribed and sworn to before me this 10th day of March, 1948. Earl Lippold, County Clerk, by Marie E. McPherson, Deputy.

[fol. 59] [File endorsement omitted.]

[fol. 60] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

[Title omitted]

NOTICE OF APPEAL—Filed March 24, 1948

To the Clerk of the above entitled Court, and to the Defendants, County of Los Angeles; William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, and each of them as members of the Board of Supervisors of said County; Wayne Allen, as Chief Administrative Officer of said County; Harold W. Kennedy, as County Counsel of said County; Charles C. Mack, G. H. Newland and T. J. O'Keefe, and each of them, as members of the Civil Service Commission of said County; Clifford Amsden, as Secretary and Chief Examiner of said Commission; and Michael Donoghue, as Registrar of Voters of said County; and Messrs. Harold W. Kennedy, G. Kelly and Robert L. Trapp, their Attorneys:

You, and each of you, will please take notice that the plaintiffs in this action, and each of them, do hereby appeal to the Supreme Court of the State of California from that certain judgment entered by the above entitled Court on [fol. 61] March 9, 1948, dismissing the above entitled action, which judgment is based upon the order of said Court, dated March 5, 1948, sustaining defendants' demurrer to plaintiffs' amended complaint, without leave to amend.

Dated this 24th day of March, 1948.

Gallagher, Margolis, McTernan & Tyre, by John T. McTernan, Attorneys for Plaintiffs.

[File endorsement omitted.]

[fol. 62] IN SUPERIOR COURT OF LOS ANGELES COUNTY

STIPULATION RE DESIGNATION OF RECORD ON APPEAL AND NOTICE TO CLERK TO PREPARE RECORD ON APPEAL—Filed March 24, 1948

Plaintiffs having filed their notice of appeal from the judgment of the Court dismissing the above-entitled action,

It is hereby stipulated by and between the plaintiffs in the above-entitled action, through their attorneys of record,

and the defendants in said action, through their attorneys of record, that the documents hereinafter set forth shall be the record on said appeal, and the Clerk of the above-entitled court is requested to make up and prepare the following documents only and certify the same as said record on appeal, in accordance with the provisions of Section 953a of the Code of Civil Procedure and Section 5(b) of the Rules On Appeal adopted by the Judicial Council, to the Supreme Court of the State of California:

1. The Amended Complaint;
2. The Demurrer to the Amended Complaint;
3. The Memorandum of Ruling on said Demurrer, dated March 5, 1948;
4. The Order of the Superior Court sustaining said Demurrer without leave to amend;
5. The Judgment of the Superior Court, entered March [fol. 63] 9, 1948;
6. The Notice of Entry of said Judgment;
7. Plaintiffs' Notice of Appeal from said Judgment;
8. This Stipulation.

Dated: This 24th day of March, 1948.

Gallagher, Margolis, McTerman & Tyre, by John T. McTernan, Attorneys for Plaintiffs. Harold W. Kennedy, Gerald G. Kelly, Robert L. Trapp, by Gerald G. Kelly, Deputy County Counsel, Attorneys for Defendants.

[File endorsement omitted.]

[fols. 64-66] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 67-391] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 392] [File endorsement omitted].

IN THE DISTRICT COURT OF APPEAL, SECOND APPELLATE DISTRICT

JULIA LEARNED STEINER, Plaintiff and Appellant,

vs.

RAYMOND V. DARBY, et al., Defendants and Respondents

HELEN PARKER, et al., Appellants,

vs.

COUNTY OF LOS ANGELES, et al., Respondents

OPINION—Filed November 12, 1948

Appeal from the Superior Court of Los Angeles County, Clarence M. Hanson, Judge

A. L. Wirin, Fred Okrand; for Appellant Steiner.

Harold W. Kennedy, County Counsel; Gerald G. Kelly and Robert L. Trapp, Deputies County Counsel, for Respondents Raymond V. Darby, et al.

Gallagher, Margolis, McTernan & Tyre, John T. Mc-[fol. 393] Ternan, William B. Murrish; Kenny & Cohn, Robert W. Kenny; Charles J. Katz, for Appellants Parker, et al.

Harold W. Kennedy, County Counsel; Gerald G. Kelly and Robert L. Trapp, Deputies County Counsel, for Respondents County of Los Angeles, et al.

By stipulation of the parties the above entitled cases involving the same point are submitted for decision on a single set of briefs and since the identical point is involved in each case they will be treated as the same case for the purposes of this opinion.

Conceded Facts

On August 26, 1947, the Board of Supervisors of the County of Los Angeles adopted a resolution requiring each officer and employee under its jurisdiction to execute an oath and affidavit reading as follows:

"Oath and Affidavit

Department ——

A. Oath of Office or Employment

I, —— ——, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of California, [fol. 394] against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office or employment on which I am about to enter or am now engaged. So Help Me God.

B. Affidavit Re Subversive Activity

I do further swear (or affirm) that I do not advocate, nor am I now a member nor have I been since December 7, 1941, a member of any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles, by violence, except those specified as follows: —— and that during such time as I am an officer or employee of the County of Los Angeles, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles, by force or violence.

C. Affidavit Re Aliases

I do further swear (or affirm) that I have never used [fol. 395] or been known by any names other than those listed as follows: —— ——."

Also included in the document is paragraph "D" requiring such officers and employees to indicate whether they have ever been a member of or supported any of some 142 named organizations.

September 3, 1947, plaintiffs, who are employees of the County of Los Angeles, filed complaints seeking an injunction to prevent defendants from requiring them to execute an affidavit as set forth above.

March 5, 1948, the Honorable Clarence M. Hanson, trial judge, sustained demurrers to plaintiffs' amended complaints without leave to amend, and on March 9, 1948, judgments of dismissal of the actions were entered. From these judgments plaintiffs appeal. There are also purported appeals from the orders sustaining defendants' demurrers to plaintiffs' complaints as amended.

Question

May the Board of Supervisors of the County of Los Angeles proceed with a fact-finding program under which the officers and employees within its jurisdiction are asked: (1) to take an oath of allegiance to the federal and state constitutions and the laws of California as against all [fol. 396] *enemies of the United States of America, the State of California, and the County of Los Angeles; and (2) as such officers and employees to answer upon their oath or affirmation, (a) whether or not they advocate the overthrow of the government by force or violence and whether or not since December 7, 1941, they have been members of any organizations or political parties that advocate the overthrow of the government by force or violence, as well as to sign an affidavit not to advocate the overthrow of the government by force and violence or to become a member of an organization or political party which so advocates so long as the person is a county officer or employee; (b) to state any aliases they have ever used or been known by; and (c) to indicate whether they have ever been a member of or directly or indirectly supported any of the organizations listed in the affidavit submitted to them?*

This question must be answered in the affirmative. The mere asking of the question points unerringly to the answer any *loyal, sane* citizen of the United States of America would give to it. It is an unequivocal "Yes".

The People of the state of California are supreme and [fol. 397] have the undoubted right to protect themselves and to preserve the form of government which they have

adopted against any and all enemies whether they be domestic or foreign. It is not alone the right of the People to protect themselves and their chosen form of government against attack from all sources, but it is their duty to do so, since they have guaranteed to the people of the United States "a Republican Form of Government" in this state. (Constitution of the United States, Art. IV, sec. 4; Constitution of California, Art. I, sec 3.)

Every citizen is a minority member of society, and the form of government which the people of the several states have adopted guarantees to each minority member, as well as to the majority, a republican form of government in his own state. Such form of government has long since passed through the experimental stage. It has proved to be the most satisfying to the aspirations of mankind, and at the same time the most practical government yet devised. Trial and experience have demonstrated it to be the best form of government that this world has ever known. Our system has maintained democratic processes, improved the condition of the people, preserved liberty, promoted justice, [fol. 398] encouraged the arts and sciences, and served the needs of changing peoples. All this in spite of an occasional administrative failure to adhere to the Constitution of the United States, due to incompetence or criminal design of some individual.

The People acting through their duly authorized representatives have assumed the foregoing obligation and have plenary power to perform it under any and all conditions.

The extreme limit to which the People may exercise this power is found in their undisputed right to require a citizen to give his time, be maimed, or even sacrifice his life in defense of his country.

In Arver v. United States, 245 U. S. 366 (62 Law Ed. 349, 358), at page 390 Mr. Chief Justice White, speaking for the Supreme Court of the United States says: "Finally, as we are unable to conceive upon what theory the exaction by government from the citizen of the performance of his supreme and noble duty of contributing to the defense of the rights and honor of the nation as the result of a war declared by the great representative body of the people can be said to be the imposition of involuntary servitude, in violation of the prohibitions of the 13th Amendment, we [fol. 399] are constrained to the conclusion that the contention to that effect is refuted by its mere statement."

Again in United States v. Macintosh, 283 U. S. 605, 624 et seq. (75 L. Ed. 1302, 1310), Justice Sutherland, in discussing the question of an individual citizen's allegiance to the government of the United States, succinctly states the situation as follows:

"In Jacobson v. Massachusetts, 197 U. S. 11, 29, 49 L. ed. 643, 651, 25 S. Ct. 358, 3 Ann. Cas. 765, this court, speaking of the liberties guaranteed to the individual by the 14th Amendment, said:

"'. . . and yet he may be compelled, by force if need be, against his will and without regard to his personal wishes or his pecuniary interests, or even his religious or political convictions, to take his place in the ranks of the army of his country and risk the chance of being shot down in its defense.' • • •

"When he speaks of putting his allegiance to the will of God above his allegiance to the government, it is evident, in the light of his entire statement, that he means to make *his own interpretation* of the will of God the decisive test which shall conclude the government and stay its hand. [fol. 400] We are a Christian people (Church of the Holy Trinity v. United States, 143 U. S. 457, 470, 36 L. ed. 227, 231, 232, 12 S. Ct. 511), according to one another the equal right of religious freedom, and acknowledging with reverence the duty of obedience to the will of God. But, also, we are a nation with the duty to survive; a nation whose Constitution contemplates war as well as peace; whose government must go forward upon the assumption, and safely can proceed upon no other, that unqualified allegiance to the nation and submission and obedience to the laws of the land, as well those made for war as those made for peace, are not inconsistent with the will of God."

Clearly, since the government of the United States has the right to force an individual citizen (a minority member of society) to surrender his life in defense of his country, any state in attempting to perpetuate its loyalty to the union has the unquestioned right and duty to exact from its citizens adherence to all lesser measures which have for their purposes the preservation of our form of government and the repression of its enemies. Therefore, when a person enters the employ of this state or any subdivision thereof, he impliedly surrenders certain natural rights which would re- [fol. 401] main his if he were a private citizen only just the

same as he would surrender certain privileges if he were to enter private employment.

This rule is well stated by Mr. Justice Holmes in McAuliffe v. Mayor, etc., of City of New Bedford, 29 N. E. 517. The great jurist was then sitting on the Supreme Court of Massachusetts. He had before him a petition for mandamus to restore the petitioner to the office of policeman in the City of New Bedford. Petitioner had been removed by the Mayor after a hearing because he had violated a rule which read: "'No member of the department shall be allowed to solicit money or any aid, on any pretense, for any political purpose whatever.' *There was also evidence that he had been a member of a political committee, which likewise was prohibited.*" (Italics ours.) The jurist's unanswerable logic proceeded: "It is argue- by the petitioner that the mayor's finding did not warrant the removal; that the part of the rule violated was invalid, as invading the petitioner's right to express his political opinions; . . . One answer to this argument . . . is that there is nothing in the constitution or the statute to prevent the city from attaching obedience to this rule as a condition to the [fol. 402] office of policeman, and making it part of the good conduct required. The petitioner may have a constiutional right to talk politics, but he has no constitutional right to be a policeman. *There are few employments for hire in which the servant does not agree to suspend his constitutional rights of free speech as well as of idleness by the implied terms of his contract.*" (Italics ours.)

An analogous rule is found in the case of Christal v. Police Commission, 33 Cal. App. 2d 564. In this case petitioners who were formerly policemen of the City and County of San Francisco sought by mandamus to be reinstated in their positions. The cause of their removal was predicated upon the fact that they were subpoenaed to appear before the grand jury and refused either to produce their private records or to answer questions concerning their assets and income. The court said at page 567, et seq.:

". . . the main question involved is whether appellants, while holding positions as police officers, could exercise the constitutional privilege of refusing to testify before the grand jury under the circumstances and still insist upon retaining their positions as police officers. . . . We [fol. 403] need not further discuss the nature of said privi-

lege here as it is conceded by all that said officers could exercise that privilege in any proceeding. We are concerned here only with the result of the exercise of such privilege, by those holding the positions of police officers, in an investigation by which it was sought to determine whether such officers had been guilty of criminal activities in connection with their duties as police officers. * * *

"We are not unmindful of the constitutional privilege above mentioned which may be exercised by all persons, including police officers, in any proceeding, civil or criminal. . . . As we view the situation, when pertinent questions were propounded to appellants before the grand jury, the answers to which questions would tend to incriminate them, they were put to a choice which they voluntarily made. Duty required them to answer. Privilege permitted them to refuse to answer. They chose to exercise the privilege, but the exercise of such privilege was wholly inconsistent with their duty as police officers. They claim that they had a constitutional right to refuse to answer under the circumstances, but it is certain that they had no constitutional right to remain police officers in the fact of their clear violation of the duty imposed upon them.

(McAuliffe v. Mayor of New Bedford, 155 Mass. 216 (29 [fol. 404] N. E. 517). We are of the opinion that such a violation of duty would constitute cause for dismissal even in the absence of any specific rule requiring such officers to give testimony before the grand jury, or of any specific rule relating to 'conduct unbecoming an officer.' That such conduct constituted 'conduct unbecoming an officer,' there can be no doubt. * * *

"There is nothing startling in the conception that a public servant's rights to retain his office or employment should depend upon his willingness to forego his constitutional rights and privileges to the extent that the exercise of such rights and privileges may be inconsistent with the performance of the duties of his office or employment. One of the most cherished rights guaranteed by the Constitution is that of freedom of speech, yet no one would maintain that a police officer could fully exercise that right without violating the duties imposed upon him by the acceptance of his employment as a police officer. The right of freedom of speech might be relied upon by a police officer who had disclosed to persons conducting an illegal establishment, information concerning the plan of the police department

to conduct a raid upon such establishment, but the furnish-[fol. 405] ing of such information would be inconsistent with and violative of the duties of such police officers. Such conduct would constitute cause for dismissal with or without any specific rule on the particular subject, and in the event of the adoption of a rule providing for dismissal of any officer making such disclosure, the claim that such rule violated any constitutional right of the officers would be clearly untenable."

In Hayman v. City of Los Angeles, 17 Cal. App. 2d 674, a motor truck driver sought by mandamus to be reinstated to his position in the City of Los Angeles. He claimed that his discharge was improper on the theory of the violation of his constitutional rights of freedom of speech and freedom of assembly. It appeared that he had caused dissension among employees by circulating a handbill protesting against the rules adopted by the Board of Public Works. The court disposed of petitioner's claim that his constitutional guarantees of freedom of speech and freedom of assembly entitled him to conduct such activities by the following statement at page 678 et seq.:

"He seeks to justify his activities upon the ground of his constitutional right of freedom of speech and assembly. [fol. 406] The right which is involved here is not that which petitioner thinks has been denied him, but is the right of respondents to exercise a reasonable supervision over city employees, to the end that proper discipline may be maintained and that activities among employees be not allowed to disrupt or impair the public service. Such is not only the right but the duty of the city and its several departments. In the exercise of this duty they must be allowed a wide discretion and their acts are not subject to review by the courts until they have reached the point of illegality."

Finally, Chief Justice Gibson, in the case of Communist Party v. Peck, 20 Cal. 2d 536, speaking for the Supreme Court of California, states the rule as follows, page 551:

"There is no doubt, however, that the remainder of section 2540.4 comes within the Legislature's power to prescribe tests and conditions for participation in primary elections. *This power certainly includes the right to adopt tests designed to exclude those political parties advocating the overthrow of the government by unlawful means or those*

[fol. 407] *parties carrying on a program of sabotage, force and violence, sedition or treason.* Such groups constitute an immediate threat to the functioning of our institutions, including the continued exercise of the right of suffrage. Since it is within the power of the state as to such groups to restrict even the rights of free speech and free press (see, for example, Whitney v. California, 274 U. S. 357 (47 S. Ct. 641, 71 L. Ed. 1095); Stromberg v. California, 283 U. S. 359 (51 S. Ct. 532, 75 L. Ed. 1117); DeJonge v. Oregon, 299 U. S. 353, 364 (57 S. Ct. 255, 81 L. Ed. 278), it clearly was within the reasonable bounds of the Legislature's power to determine that these bodies should also be barred from the primary election ballot. Under such circumstances we have no doubt that the Legislature's power to exclude parties and individuals from participation in a primary election extends to those groups whose political beliefs create a clear danger to the continued existence of the institutions under which our constitutional form of government functions. Section 2540.4 of the Elections Code, omitting the invalid portions which are clearly severable, must be upheld as a proper condition for participation in primary elections in this state in the following form [fol. 408] 'Notwithstanding any other provisions of this code, no party shall be recognized or qualified to participate in any primary election . . . which either directly or indirectly carries on, advocates, teaches, justifies, aids or abets the overthrow by any unlawful means of, or which either directly or indirectly carries on, advocates, teaches, justifies, aids or abets a program of sabotage, force and violence, sedition or treason against, the Government of the United States or of this State'." (Italics ours. See also, Danskin v. San Diego Unified School District, 28 Cal. 2d 536, 548; Congress of Industrial Organ. v. City of Dallas, 198 S. W. 2d 143, 146; Bell v. District Court of Holyoke, 51 N. E. 2d 328, 330; United States v. Bryan, 72 Fed. Supp. 58, 63.)

The foregoing cases support the obvious rule that plaintiffs, as public servants, have the implied duty to support the form of government lawfully chosen by the People whom they are employed to represent, and that they impliedly agreed, when they accepted public employment, to act as representatives of the People and not to advocate destruction of the government by force or violence. By accepting public employment they forego any privilege they may have

[fol. 409] had as private citizens to advocate the overthrow of the government by force and violence. It is inconceivable that they should be permitted to represent the People, be supported by the People, and at the same time have the privilege of advocating the overthrow of the very government by which they are employed and obtain their livelihood. If they cannot subscribe to the prescribed affidavit they may join those who serve themselves in the ranks of private employment.

There is nothing in the foregoing rule or affidavit which in the slightest degree affects the plaintiffs' rights of political belief or religious belief. Defendants are simply performing their duty by making proper inquiry of their employees as to their loyalty to their employer, the People of the State of California. There is nothing in the oath or affidavit which requires plaintiffs to surrender any constitutional right. If they desire to advocate the overthrow of the government of the United States, the State of California, or the County of Los Angeles, they may do so by any and all lawful means after first resigning from their public employment. It needs no argument to support the thesis that their employer, the People of the State of California, [fol. 410] need not wait until after an employee has committed some overt act before making inquiry as to his fitness to occupy the position which he holds. Certainly it is clear that a private employer would be perfectly justified in requiring an employee to submit to questioning and examination before leaving his place of employment in order to ascertain whether the employee was stealing property of the employer, and he might obviously question his employee as to whether he intended to take or destroy the employer's property. A servant employed by the People is held to an even higher standard, and his employer, the People, not only may, but it is their duty through their authorized representatives to make proper inquiry as to his fitness for the position which he occupies and as to his intentions and acts relative to his loyalty to the People.

Many fraternal and other organizations require that a neophyte assume an obligation of loyalty to the government of the United States of America prior to his attaining membership in the organization. It has never been questioned, nor could it reasonably be questioned that the organization had a right to exact such an obligation prior to accepting the applicant for membership. None of his constitutional

[fol. 411] rights is invaded by such requirement. For example, no one would think of claiming that a prospective member of the Benevolent and Protective Order of Elks was having his constitutional rights violated because such Order, before admitting a member, requires that he take an obligation to be loyal to the government of the United States of America.

If a private organization can lawfully require a loyalty obligation, without question the People may require such an obligation from a person seeking to remain in a public position with its attendant perquisites and manifold benefits.

The obligation or oath required of defendants is substantially the same as that which a foreign born person is required to take before becoming entitled to the honor, benefits and privileges of being a naturalized citizen of the United States of America.* Since a naturalized citizen has the same rights and duties as a native born, with certain constitutional exceptions, there is not any logical reason why a native born citizen should object to assuming a similar [fol. 412] obligation.

The Honorable Clarence M. Hanson, the trial judge, in sustaining the demurrers without leave to amend, filed an opinion in which we concur. Such opinion with appropriate changes is adopted and made a part of this decision. It reads thus:

"The primary question presented, viewed in its broadest aspect, is whether the Board of Supervisors may require the officers and employees under its jurisdiction (1) to take an oath of allegiance to the federal and state constitutions, and the laws of California as against all enemies of the United States and the State, and (2) require such officers and employees to answer upon their oath certain questions that touch upon the oath [of allegiance].

"The plaintiff in cause No. 534177 is a civil service employee of the County of Los Angeles. She alleges in her amended complaint that she is *not* a member of the Communist Party or of any of the organizations listed on the questionnaire submitted to her. She avers, however, that the requirement thereby sought to be imposed upon her, i.e.,

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* 8 U. S. C. A. (1942) (Title Aliens and Nationality), p. 742, para. 735.

that she take the oath in the form tendered and respond under oath to the questionnaire submitted, violates her [fol. 413] constitutional rights as an American citizen.

"The fifteen plaintiffs in cause No. 534288 allege in their amended complaint that they are civil service employees of the County of Los Angeles. They likewise aver that the requirement sought to be imposed upon them, i. e., that they take the oath in the form tendered and respond under oath to the questionnaire submitted, violates their constitutional rights as American citizens.

"The form of the oath here in question, a part of the questionnaire, reads as follows: (Here is recited the oath above set forth.) * * *

"Without narrating in detail the allegations of the two amended complaints it will suffice to say that they allege, in almost every conceivable way, that the defendant board and its agents are without power to impose the requirements in question; that the manner, method and application of the power, if power there be, is without legal sanction and violative of the statutory and constitutional rights of the plaintiffs and all employees of the defendant county required to submit to the questionnaire and take the oath in question.

"In this State it is well established that the Board of [fol. 414] Supervisors under our Constitution, the state laws and the Charter of the County, exercises the powers of the county, except as it is otherwise specifically limited. The Board is vested with the power to appoint all county officers and employees, not otherwise provided for by the Charter. However, with respect to the classified service, the appointments must be made from the so-called eligible civil service list.

"The Civil Service provisions of the Charter authorize the Civil Service Commission to prescribe, amend and enforce rules for the classified service, to make investigations concerning the enforcement and effect of its rules, and the efficiency of the service. Moreover, the commission is empowered to reject candidates who wish to be placed upon civil service rolls where they fail to measure up to the reasonable requirements of the commission and likewise it is authorized to drop persons who have attained the eligible list, for like reasons.

"In case the appointing power wishes to discharge a civil service employee the reasons therefor must be given and,

thereupon, if the employee so desires he is entitled to a hearing before the commission. If the commission finds that the reasons are not sufficient, the discharge is void, [fol. 415] despite anything the appointing power can do about it.

"From what has so far been said, it is self-evident that neither the Board nor its agents can discharge a civil service employee for any cause that the Civil Service Commission finds insufficient. Accordingly, if in the view of the Board of Supervisors, or its agents as the appointing power, a civil service employee should be discharged on the sole ground that the employee is 'subversive', the discharge or attempt to discharge on that ground is of no effect if, on hearing, the Commission holds otherwise.

"What then are the powers of the Board and its agents with respect to laying a *good or bad* foundation for a discharge of an employee? Clearly, the appointing power—whether it be private or public—is entitled, subject to a review by the Commission, to discharge for cause or no cause, and, as a corollary, to investigate as it sees fit as a basis for such cause, save and except as it is restricted by law.

"Section 41 of the Charter provides that 'no person in the classified service . . . shall be appointed, or reduced or removed or in any way favored or discriminated against [fol. 416] because of his political or religious opinions or affiliations.' Aside from this restriction there are no restrictions by the Charter or by law on the appointing power of the board or its agents in appointing or discharging civil service employees, except as noted.

"It seems self-evident, then, that aside from any restraining constitutional provision, the Board of Supervisors itself or through its agents duly authorized may investigate to its heart's content the character, the antecedents, the viewpoints and the affiliations of any of its employees, including those in the civil service, so long as the investigation does not touch upon the political or religious opinions or affiliations of the employee. Moreover, it would seem to follow that so long as the Board does not impinge upon these restrictions, it may, like any private employer, demand of its employee an oath, if it chooses, and a response to a questionnaire as a basis in whole or in part for his discharge. The fact that a person is on the civil service rolls

does not insulate him from the lawful actions of the appointing power or enable him to restrict them, except for the rights specifically granted to him by the provisions of the Charter. Like any private employer the county may ques- [fol. 417] tion its employees *and demand* unquestioned loyalty, *in the manner it lays it down*, except as restricted by law. To be sure, a private employer, or a public employer, may now and then demand more than is necessary, in the view of individuals concerned or of the courts, but that fact, if it be a fact, is not a ground for the slightest interference on the part of the courts. (United Public Workers v. Mitchell, 1947, 91 L. Ed. 509.)

"There remains then to consider whether the action, or the alleged threatened action, of the Board or its agents, violates the rights of the plaintiffs under the federal or the state constitutions. The plaintiffs contend that their rights in this respect are violated in view of the provisions of the First and Fourteenth Amendments of the federal Constitution and the cognate provisions of our state constitution.

"Shortly stated, the plaintiffs contend that the action of the Board and its agents in requiring the employees to take the oath propounded and to give answer to the questionnaire, under oath, violates an employee's rights guaranteed to him under the federal and the state constitutions. These rights, as set forth by the plaintiffs, are as follows:

[fol. 418] "(1) 'Every citizen may freely speak . . . his sentiments on all subjects, being responsible for the abuse of that right. . . .' (California Constitution, Article I, Section 9.)

"(2) 'The people shall have the right to freely assemble together to consult for the common good, to instruct their Representatives, and to petition the Legislature for redress of grievances.' (Calif. Const., Art. I, Sec. 10.)

"(3) 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' (14th Amendment, U. S. Const.)

"In viewing the constitutional mantle thrown around an individual it is important to remember that the mantle is a *safeguard*, not *absolute*, but *relative* and *qualified*. Our

federal and state constitutional provisions, which guarantee freedom of speech and of opinion, freedom of the press, freedom of assembly, are not licenses to do completely as one chooses, without regard to the other fellow, who possesses exactly the same liberties. When one purports to pursue the liberties granted by the constitution he needs to [fol. 419] remember that the other fellow has equal liberties and, what is more, he has the liberty to refuse to listen to another's speech or opinion and the right to refuse to yield to him his own right of assembly. Conceivably, a person may be of the opinion that it is entirely proper to drive through a stop light, or on city streets at 80 miles an hour in violation of an ordinance, but even so, setting up constitutional provisions as a defense will prove ill-advised. So, too, one may believe that the 14th Amendment is a defense to acts that sabotage the Government or are subversive to it, but one will quickly find that the constitutional provision against treason is not cut down or modified, in the least, by the First Amendment or any other provision of the federal or state constitutions.

"In what manner, then, do the requirements as laid down by the Board, or as applied by its agents, impinge on the constitutional rights of the plaintiffs or any other officer or employee subject to the general jurisdiction of the Board? Some of the plaintiffs, but not all of them, do say that they have no objection to an oath that would require them to support the constitution, federal and state, but that the oath [fol. 420] in question goes further and, consequently violates their constitutional rights. The oath, it is true, calls upon the employee not only to support the constitution, state and federal, but to abjure enemies of the Government, both domestic and foreign, but even if that be true, as it is, what is wrong with that in these United States? Moreover, where is the constitutional provision which directly or indirectly prohibits the Board from demanding that an employee subscribe to the oath? The answer is, there is none, and therefore no more need be said on that subject.

"We come next to the questionnaire. It requires that the employee, aside from taking the oath submitted, answer under oath (1) whether or not he advocates the overthrow of the Government and whether or not, since December 1, 1941, he has been a member of any political party or organization that advocates the overthrow of the Government by

force or violence; (2) the name or names which he has used or been known by; (3) whether or not he has been a member of or directly or indirectly supported any of the organizations listed on the questionnaire.

"With respect to these particular questions in the questionnaire, the plaintiffs contend they violate their consti- [fol. 421] tutional rights, in that, whether they do or do not personally advocate the overthrow of the Government by force or violence, or belong or do not belong to organizations with such objectives, the provisions of the two constitutions sustain them in their refusal to answer. This is the crux of the argument of the plaintiffs in this aspect of the case. Accordingly, we may now proceed at once to a determination of the issue thus made.

"A year ago the Supreme Court of the United States answered these identical contentions in the case of United Public Workers v. Mitchell, 91 L. Ed. 509. Accordingly we may now well turn to that decision for the light it throws on the very similar problem which is posed in the case before us. In that case, instituted by civil service employees, as is the case here, it was contended that the so-called federal Hatch Act, in prohibiting federal classified civil service employees from taking 'any active part in political management or in political campaigns', violated their constitutional rights in that it prohibited them from doing the very thing which an ordinary citizen could do with impunity. Accordingly, in that case as here, the plaintiffs sought de- [fol. 422] claratory relief and an injunction. In holding that the Act was constitutional, the court pointed out that as early as 1882 the court had held that it was entirely proper for Congress to prohibit party activity by federal employees in the classified service. The court said: 'The conviction that an actively partisan governmental personnel threatens good administration has deepened since Ex Parte Curtis (106 U. S. 371 (1882)) . . . Congress and the President are responsible for an efficient public service. If, in their judgment, efficiency may be best obtained by prohibiting active participation by classified employees in politics as party officers or workers, we see no constitutional objection. . . . To declare that the present supposed evils of political activity are beyond the power of Congress to redress would leave the Nation impotent to deal with what many sincere

men believe is a material threat to the democratic system.

" '. . . The determination of the extent to which political activities of government employees shall be regulated lies primarily with Congress. Courts will interfere only when such regulation passes beyond the general existing conception of governmental power. . . .

" 'When actions of civil servants in the judgment of Con- [fol. 423] gress menace the integrity and the competency of the service, legislation to forestall such danger and adequate to maintain its usefulness is required. The Hatch Act is the answer of Congress to this need. We cannot say with such a background that those restrictions are unconstitutional.' • • •

"In view of the decisions just quoted . . . it seems clear that the acts of the defendant Board and its agents, whether they go to the extent claimed by the plaintiffs or not, are within the scope of the power of the Board and are in no sense unconstitutional. Whether the appointing power will or will not discharge employees as claimed by the plaintiffs, for causes of the character enumerated, and whether the Civil Service Commission will uphold such discharges, if any, on such causes, are not matters upon which this Court may speculate or adjudicate at this time. . . ."

An order sustaining a demurrer is not appealable but is reviewable on an appeal from the judgment. (Harmon v. De Turk, 176 Cal. 758, 761. See also cases cited in 2 McKinney New California Digest, 1946, p. 141, Appeal and Error, sec. 39 (b). Hence the purported appeals from the orders [fols. 424-431] sustaining the demurrers are dismissed.

The judgments are and each is affirmed.

McComb, J.

We concur:

Moore, P. J.; Wilson, J.

[fol. 432] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

HELEN PARKER, et al., Appellants,

vs.

COUNTY OF LOS ANGELES, et al, Respondents

JULIA LERNER STEINER, et al., Appellants,

vs.

COUNTY OF LOS ANGELES, et al, Respondents

APPELLANTS' JOINT PETITION FOR HEARING IN SUPREME COURT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the State of California:

Helen Parker, *et al.*, and Julia Lerner Steiner, *et al.*, appellants here and plaintiffs below in companion cases considered and disposed of jointly below, respectfully request that this Honorable Court order that the above entitled cases be transferred to the Supreme Court for hearing and decision after decision for the District Court [fol. 433] of Appeal, Second Appellate District, Division 2, affirming the judgement of the trial court in favor of respondents, and request that a hearing in this Court after decision by said District Court of Appeal is necessary upon the following ground:

To secure the settlement of important questions of law of the gravest public consequence.

Summary Statement of the Case *

The issues of law presented to this Court by this petition are of the gravest public import. They concern the most fundamental liberties in our constitutional society, the basic

* The two causes come here on virtually identical records and were disposed of by a single opinion below. The complaint in the Parker case has been set out in Appendix 1 and the opinion of the District Court of Appeal in Appendix 2.

rights of citizens to freedom of thought, speech and association. The issues at all stages below were issues of law, never of fact, for those issues were framed from the outset herein by the trial court's sustaining a demurrer without leave to amend to appellants' complaint.

In their complaint appellants sought injunctive and declaratory relief charging respondents with a conspiracy to impair, obstruct, burden and destroy the fundamental rights and liberties enjoyed by appellants as members of a self-governing democratic society. The demurrer, of course, conceded the facts upon which the complaint was predicated to be true. Notwithstanding this the District Court below, for reasons and on premises at war with fundamental constitutional tenets and contrary to authoritative principles established by the decisions of this Court and the United States Supreme Court, approved the sustaining of [fol. 434] the demurrer and affirmed judgment of dismissal.

In such premises, the petition herein is of import not alone to appellants but to the whole State of California, its people and its courts. The liberties of the people indispensable to their self-government are rights which can be yielded to no demurrer. And constitutional democracy can be subjected to no judgment of dismissal. Appellants speak advisedly when they assert that the decision below portends the forfeiture of nearly every constitutional guarantee lying at the root of self-governing society and a republican form of government.

The case so presented may be briefly summarized:

Appellants are permanent employees in the classified service of the County of Los Angeles; they sue in a representative capacity on behalf of all classified employees of the County. The respondents are public officers of the County of Los Angeles, including the Board of Supervisors, the Chief Administrative Officer, the County Counsel, the Sheriff and the Civil Service Commission of that County.

On or about April 1, 1947, the Board of Supervisors directed the Chief Administrative Officer and the County Counsel to compose a scheme of investigation into the thoughts, speech and association of all County employees [App. 1, p. 5, Par. IV] to determine whether or not there were "any Communists, avowed or otherwise" [App. 1,

p. 21, lines 16-7], or any persons who were "communistic" or "subversive" in the employ of the County [App. 1, p. 5, Par. IV].

Pursuant to these instructions the Chief Administrative Officer and the County Counsel composed and drafted the [fol. 435] scheme and plan set forth in the document attached to the Complaint as Exhibit A [App. 1, p. 6, Par. V].

On August 26, 1947, the Board of Supervisors adopted and approved the scheme as drafted and ordered that it be placed into operation [App. 1, p. 6, Par. VI.] The Board appointed the Chief Administrative Officer, the County Counsel, the Sheriff and the Secretary of the Civil Service Commission as a committee to assist the Board in administering the scheme and plan [App. 1, p. 5, Par. II(j)].

Formulated in respondents' express language the objectives of their scheme and plan, and the standards by which their administrative action is to be determined are as follows:

1. the detection and penalization of "any known subversively inclined persons." [App. 1, p. 24, lines 11-2.]

2. the detection and penalization of "any Communists, avowed or otherwise." [App. 1, p. 21, lines 16-7.]

3. the detection and penalization of advocacy, belief or association which is "subversive" or "Communistic." [App. 1, p. 22, lines 29-30; p. 23, lines 1, 2, 10, 16, 18-9, 23, 29-30.]

4. the detection and penalization of advocacy of or association for the purpose of "overthrowing our government" (without qualification as to method, whether lawful or unlawful, peaceful or by force and violence). [App. 1, p. 23, line 15.]

As will be developed below the very formulation of these objectives and standards declares a purpose to investigate the thought, speech and association of County employees [fol. 436] and to measure them against criteria of orthodoxy so vague and indeterminate in meaning as to place no limits upon respondents' discretion. Respondents have threatened and declared their intent to impose discharge, public stigma of disloyalty and other penalties upon County

employees who fail to satisfy the unbridled and undefined judgment of respondents under the loyalty plan [App. 1, pp. 7-9, Pars. IX and X].

In pursuit of the purpose of measuring the thought, speech and association of all County employees against the above-listed standards of propriety, the Board of Supervisors directed the Administrative Committee above described to ascertain whether any County employees have registered affiliation with the Communist Party with the County Registrar of Voters at any time during the past ten years [App. 1, p. 21, lines 28-32]. The Board further directed the Committee to seek information from the Federal Bureau of Investigation and the County Sheriff [App. 1, p. 22, lines 1-6]. The Board directed the Committee to require every County employee to execute an affidavit under oath, (1) denying or affirming membership in "any political party or organization that advocates the overthrow of the government of the United States or the State of California or the County of Los Angeles by force and violence"; and (2) indicating whether or not said employee had ever "been a member of or directly or indirectly supported or followed" any organization or publication out of a list of some 150 organizations and publications of a political and kindred character [App. 1, p. 22, line 7 *et seq.*].

With respect to that portion of the affidavit relating to the 150 organizations and publications, the complaint alleges that the members of the administrative committee, [fol. 437] pursuant to the program, have threatened to and unless restrained will presume that any County employee who indicates in his affidavit that he has ever belonged to or directly or indirectly supported or followed any of the organizations or publications has thereby (that is by his exercise of his constitutional freedom of speech, thought and association) offended against the standards of orthodoxy established by the Board, and upon that basis the Administrative Committee will call upon such employee to carry the burden of proving his orthodoxy nonetheless [App. 1, p. 23, lines 25-30].

In such event, unless the employee concerned succeeds in overcoming this presumption of guilt by proving that his speech, thought or association has never offended against the standards of propriety above enumerated, the complaint alleges the respondents intend to, have threatened to and unless restrained will (1) publicly stigmatize said employees

as subversive and disloyal [App. 1, pp. 6-7, Par. VIII(a)]; (2) discharge, reduce or otherwise discriminate against such employees [App. 1, p. 7, Par. VIII (c)]; or subject such employees to other penalties therefor [App. 1, pp. 8-9, Par. X(2)].

The above matters relate to past conduct. The complaint alleges that in like manner as to future conduct the respondents intend to, have threatened to and will, (1) inquire into the political beliefs and opinions, the speech, thought and reading matter and the political and community associations of all County employees; (2) require all such employees to disclose under oath all matters pertaining thereto; (3) "define in their arbitrary and uncontrolled discretion, those thoughts, beliefs and opinions. Those political organizations and associations and those newspapers, books and maga- [fol. 438] zines or other publications which shall be orthodox" for all County employees; (4) require that such employees renounce and forego such thought, speech and association as may be deemed unorthodox in the discretion of respondents [App. 1, pp. 7-8, Par. IX]; and (5) penalize County employees failing in the future so to conform their thought, speech and association to the prejudices of the respondents by publicly stigmatizing such employees as subversive and disloyal and by discharging, reducing or otherwise discriminating against such employees [App. 1, pp. 8-9, Par. X(1)].

The full affront of respondents' scheme and plan against the liberties of speech, thought and association cannot be appreciated without noting the shocking breadth of the area of thought and speech covered by the organizations and publications listed in the affidavit as suspect, connection with which is alone enough to shift to the employee, at the minimum, the burden of proving his innocence of *verboten* advocacy. They cover a broad range of activities directed at the exigencies of our recent and current times. A cursory examination of the list reveals the names of four *labor unions:* American Communications Association, Federation of Architects, Engineers, Chemists and Technicians, United Federal Workers, Workers Alliance; five *political organizations:* American Communist Party, Farmer Labor Party, Hollywood Independent Citizens Committee of Arts, Sciences and Professions, Independent Citizens Committee of Arts, Sciences and Professions, National Citizens Politi-

cal Action Committee; two *publications:* Daily Worker, New Masses; five organizations dealing with various aspects of *foreign affairs:* American Committee for a Free Indonesia, League Against War and Fascism, American Russian Institute, Anti-Nazi League, Joint Anti-Fascist Refugee [fol. 439] Committee; six organizations dealing with problems of *civil rights and discrimination:* American Committee for the Protection of the Foreign Born, Bay Area Council Against Discrimination, Civil Rights Congress, International Labor Defense, National Negro Council, National Federation for Constitutional Liberties; six involved with *civic affairs:* Committee for Defense of Mexican-American Youth, Citizens Committee to Free Earl Browder, Hold the Price Line Committee, Harry Bridges Defense Committee, League of Women Shoppers, Citizens Committee for Better Education; and two *schools:* California Labor School, Communist Workers School.

With respect to the organizations and publications listed, the respondents in their own words admit that all are possessed of "publicly alleged purposes which have every appearance of being patriotic and worthy" [App. 1, p. 23, lines 4-5]. Respondents' only justification for the use of this index of proscribed organizations and publications is that they were drawn from the reports of the Joint Fact Finding Committees on Un-American Activities of the California Legislature for the years 1943, 1945 and 1947 [App. 1, p. 22, lines 15-22].

Thus, upon information gathered from "subversive files" of the F. B. I. and the Sheriff's office and from the compulsory disclosure of belief and association prescribed in the affidavit, as well as the "opportunity" to disprove subversiveness presumptively indicated in the affidavit, the classified employee is subjected to a political litmus test. There hangs in the balance his job, his chances of future employment and his reputation.

[fol. 440] Questions Presented.

1. May the County discharge or threaten to discharge County employees for thought, speech or association deemed impermissible under standards of propriety and impropriety as vague, indeterminate, ill-defined and amenable to wholly arbitrary discretion as are the four standards

for measuring the thought, speech and association enumerated in the foregoing summary without:

(a) violating the rights of said employees to freedom of speech, thought and association and intimidating, coercing and obstructing them in the discharge of their duties as citizens in a self-governing constitutional democracy to exercise those rights fully and according to their conscience, or

(b) intruding upon and into the area of governmental powers and functions reserved to the people in a self-governing constitutional democracy;

all as contrary to applicable specific provisions of the Federal and State constitutions and to the fundamental charter of governmental process conceived and established by those constitutions in whole.

2. May the County subject County employees to public stigmatization as "subversive" and "disloyal" persons, or threaten the same for thought, speech and association deemed impermissible under the standards described in Question 1 without violating the constitutional provisions and principles set forth in Question 1.

3. May the County require County employees to divulge under oath affiliation or non-affiliation with, or direct or [fol. 441] indirect support or non-support of, the 150 organizations, institutions and publications listed by the County in the instant case without:

(a) offending against the constitutional provisions and principles set forth in Question 1 for the reason that freedom of *thought* is under our compact of government *absolute* and under no circumstances may any governmental body compel citizens to divulge matters of thought and mind, including political opinions and beliefs; or,

(b) offending against the constitutional provisions and principles set forth in Question 1 for the reason that freedom of *association* is indispensable to popular self-government and to effective exercise by the people of the right to freedom of speech, and that, consistent with the preservation of the right to free-

dom of association, no governmental body may under any circumstance compel any citizen to divulge his affiliation or non-affiliation with or support or non-support of any association or organization of a political or kindred character; or,

(c) depriving County employees of their personal constitutional right to privacy and silence and immunity from inquisition or compulsory disclosure with respect to matters of their innermost conscience affecting their personal political thoughts, speech or associations in contravention of the provisions of the Fourth, Fifth and Fourteenth Amendments to the Federal Constitution and their counterparts in the State Constitution; or,

(d) offending against the constitutional provisions and principles set forth in Question 1 for the reasons [fol. 442] assigned under (a) and (b) of this question, and the constitutional provisions set forth under (c) of this question for the reasons there stated, in view of the further consideration that in the instant case the governmental body concerned expressly concedes the organizations, institutions and publications here concerned to be of such a character that from affiliation or non-affiliation therewith or support or non-support thereof no rational inference may be drawn bearing any evidentiary relationship to any speech, thought or conduct on the part of any effected employee of a character which might lawfully be condemned or penalized.

4. Considerations of freedom of speech, thought and association aside, may the County in a proceeding looking toward and aimed at discharge [for the violation by any County employee of standards authorizing discharge], require by compulsory test oath that an employee furnish evidence against himself from out of his own mouth without offending against the provisions of the Federal and State Constitutions securing to all persons immunity against compulsory self-incrimination.

5. Considerations of freedom of speech, thought and association aside, may the County require County employees to divulge under oath affiliation or non-affiliation

with or direct or indirect support or non-support of the 150 listed organizations, institutions and publications upon the basis that said organizations, institutions and publications were derived from the reports and findings of the Joint Fact Finding Committee on Un-American Activities of the California Legislature, and upon answer revealing affiliation or support of any such listed organization, in- [fol. 443] stitution or publication impose upon the affected employee the penalties of discharge or public stigmatization or upon such answer predicate a presumption of guilt precedent to the imposition of such penalties and place upon the affected employee the burden of overcoming such presumption where the imposition of like penalties or presumptions are applied only in connection with the organizations, institutions and publications named and are not applied equally to all other organizations, institutions and publications, without:

(a) offending against the provisions of the Federal and State Constitutions prohibiting bills of attainder; or

(b) offending against Article I, Soctions 21 and 11 of the California Constitution prohibiting special legislation, and

(c) offending against the provisions of the Federal and State Constitutions prohibiting the intrusion by the legislative branch of government into the area and functions reserved to the judicial branch of government.

6. Considerations of freedom of speech, thought and association aside, may the County impose upon County employees penalties by way of discharge and public stigmatization for *past* speech, thought, association or conduct upon the part of the employee without offending against the provisions of the Federal and State Constitutions prohibiting *ex post facto* legislation.

[fols. 444-445] ARGUMENT

I

The County Abridged the Rights of Appellant Employees to Freedom of Speech, Thought and Association in Con-

travention of the First and Fourteenth Amendment to the United States Constitution and Article I, Sections 9 and 10 of the California Constitution and Intruded Into the Area of Government Reserved to the People by Those Constitutions in Whole, *First*, by Threatening Discharge and Public Stigmatization Under Standards and Proscriptions Which Are Vague, Ill-Confined and Amenable to Wholly Arbitrary Discretion and Which Include the Lawful With the Unlawful, if Any, and, *Second*, by Requiring From Appellants Compulsory Disclosure of Affiliation With or Support of the Publications and Organizations Listed in the Affidavit.

[fols. 446-451] ARGUMENT

A. The County Violated the Rights and Principles Here Concerned by Threatening Discharge and Public Stigmatization Under Standards and Proscriptions Which Are Vague, Ill-Confined and Amenable to Wholly Arbitrary Discretion and Which Include the Lawful With the Unlawful, if Any.

[fols. 452-458] B. The County Violated the Rights and Principles Here Concerned by Requiring From Appellant Employees Compulsory Disclosure of Affiliation With or Support of the Publications and Organizations Listed in the Affidavit.

[fols. 459-465] C. The Premise of the District Court of Appeal That Advocacy of Force and Violence May Be Penalized Is an Insufficient Premise to Justify or Excuse the Abridgments of Speech, Thought and Association Here for the Proscriptions Here Were Not So Confined; Even Were the Proscriptions Here So Confined the Abridgments Could Not Be Justified or Excused for That Proscription Is Itself an Unconstitutional Standard.

[fols. 466-476] II

The Compulsory Disclosures of Political Speech, Thought and Association Prescribed by the County Here Violates Appellants' Privacy of Conscience and Immunity From Inquisition in Such Matters in Contravention of the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 9 and 13 of the Constitution of California.

[fols. 477-491] III

The Abridgement Herein of the Rights of County Employees to Freedom of Speech, Thought and Association and to Privacy of Conscience Respecting Political Beliefs and Affiliations Cannot Be Justified on the Grounds of Express or Implied Obligations in the Contract of Hire; in Fact the Contract of Hire Expressly Guarantees the Full and Free Exercise of the Rights Which the County Has Sought to Abridge.

[fols. 492-495] IV

The Violations of Freedom of Speech, Thought and Association Here May Not Be Defended as Acts and Measures Essential or Appropriate to the Preservation of Our Representative Form of Government.

[fols. 496-500] V

Considerations of Freedom of Speech Aside, the Requirement Here of Compulsory Disclosure Respecting Affiliation With or Support of the Listed Organizations and Publications Violates the Constitutional Provisions Prohibiting Compulsory Self-Incrimination in That the Requirement Here Compels County Employees to Give Testimony Against Themselves in a Proceeding Which Has as Its Object the Visiting of Punishment Upon Them.

[fol. 501] VI

The County's Program Offends Against the Constitutions Provisions Prohibiting Ex Post Facto Legislation.

[fols. 502-595] VII

The County's Use Here of Legislative Committee's Findings as the Basis for Imposing Penalties on Members or Supporters of Named Organizations or for Imposing Presumptions of Guilt or Shifting the Burden of Proof With Respect to Such Members or Supporters Violates the Constitutional Provisions Which Prohibit Bills of Attainder and Special Legislation and Which Forbid the Legislature From Intruding Into the Function of the Judiciary.

[fol. 596] IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

2nd Civil No. 16588

HELEN PARKER, et al., Plaintiffs and Appellants,

vs.

COUNTY OF LOS ANGELES, et al., Defendants and Respondents

STIPULATION RE RECORD ON APPEAL AND PRAECIPE—Filed March 23, 1949

The plaintiffs and appellants in the above entitled action contemplating a petition for Writ of Certiorari in the Supreme Court of the United States,

It is stipulated between the attorneys for the parties, that the entire record be certified by the Clerk of this Court to the Supreme Court of the United States save and except the following:

1. Stipulation and Petition for Retention in the Supreme Court;
2. Affidavit of John T. McTernan;
3. Application for Permission to File Brief of Amici Curiae in Support of Petition for Hearing, and Brief;

And the Clerk of this Court is requested to prepare and certify said record.

Dated: March 23, 1949.

[fol. 597] Gallagher, Margolis, McTernan & Tyre, William B. Murrish, Kenny & Cohn, Charles J. Katz, by William B. Murrish, Attorneys for Plaintiffs and Appellants. Harold W. Kennedy, County Counsel; Gerald G. Kelly, Deputy County Counsel; Robert L. Trapp, Deputy County Counsel, by Gerald G. Kelly, Deputy County Counsel, Attorneys for Defendants and Respondents.

[fol. 598] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 599] [Stamp:] Filed Jan. 10, 1949, William I. Sullivan, Clerk, by ——, L. A. Deputy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

STEINER, et al.,

v.

DARBY, et al.,

PARKER, et al.,

v.

COUNTY OF LOS ANGELES, et al.,

ORDER DENYING HEARING

After Judgment by District Court of Appeal

2nd District, Division 2, Civil Nos. 16587, 16588

Order Due Jan. 11, 1949

Appellants' petition for hearing Denied.
Carter, J., voting for a hearing.

Dated Jan. 10, 1949.

Gibson, Chief Justice.

I, William I. Sullivan, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 23rd day of March, A. D. 1949.

William I. Sullivan, by W. G. Sinsford, Deputy Clerk.
(Seal.)

[fol. 600] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1948

No. —

HELEN PARKER, et al., Petitioners,

vs.

COUNTY OF LOS ANGELES, et al., Respondents

STIPULATION RE PRINTING OF THE RECORD

In accordance with the provisions of Rule 38(8) of this Court, it is hereby stipulated between the attorneys for the parties in the above entitled action, that the entire record certified to this Court by the Clerk of the District Court of Appeal, State of California, Second Appellate District, be printed *except* the following:

1. Pages 65 and 66;
2. Page 68 through page 391;
3. Page 425 through page 431;
4. Page 444 beginning with the words "Summary of Argument," through the words "Clear and present danger," in the middle of Page 446.
5. Page 446 beginning with the words "In any area of law" through the words "of any sort" at the top of page [fol. 601] 452;
6. Page 452, beginning with the words "The method of procedure" through Page 458;
7. Page 459, beginning with the words "Much of the discussion" through Page 465;
8. Page 466, beginning with the words "The affidavit prescribed in the loyalty order" through Page 476;
9. Page 477, beginning with the words "Summary of Argument" through page 491;
10. Page 492, beginning with the words "The District Court of Appeal's opinion" through Page 495;
11. Page 496, beginning with the words "It has been urged" through Page 500;
12. Page 501, beginning with the words "Not only does" through the words "*affirming* 95 F. 2d 976," on Page 502;

13. Page 502, beginning with the words "As set forth" through Page 562;

14. Page 563, through Page 595.

Dated: This 30th day of March, 1949.

Gallagher, Margolis, McTernan & Tyre, William B. Murrish, Kenny & Cohn, Charles J. Katz, by William B. Murrish, Attorneys for Petitioners. Har- [fol. 602] old W. Kennedy, County Counsel; Gerald G. Kelly, Deputy County Counsel; Robert L. Trapp, Deputy County Counsel, by Gerald G. Kelly, Deputy County Counsel, Attorneys for Respondents.

[fol. 603] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 13, 1949

The petition herein for a writ of certiorari to the District Court of Appeal of the State of California, Second Appellate District, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 712

JULIA LEARNED STEINER, PETITIONER,

vs.

COUNTY OF LOS ANGELES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

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[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Clerk's Transcript

No. 534177

JULIA LEARNED STEINER, Plaintiff,

vs.

COUNTY OF LOS ANGELES; WILLIAM A. SMITH, LEONARD J. ROACH, John Anson Ford, Raymond V. Darby and Roger W. Jessup, and each of them as members of the Board of Supervisors of said County; Wayne Allen, as Chief Administrative Officer of said County; Harold W. Kennedy as County Counsel of said County; Charles C. Mack, G. H. Newland and T. J. O'Keefe, and each of them, as members of the Civil Service Commission of said County; Clifford Amsden, as Secretary and Chief Examiner of said Commission; Michael Donoghue, as Registrar of Voters of said County; I Doe, II Doe, III Doe, IV Doe and V Doe, Defendants

AMENDED COMPLAINT FOR INJUNCTION AND FOR DECLARATORY RELIEF—Filed Feb. 2, 1948

For a first cause of action against the defendants the plaintiff alleges:

I

The plaintiff is a citizen of the United States and a citizen of the State of California, and she is a resident of the County of Los Angeles.

At all times herein she has been, and now is, an employee of the County of Los Angeles, being a permanent Civil Service employee, engaged as librarian Grade 1 in the Central Library of the County of Los Angeles. She has [fol. 2] been an employee of the County since October, 1946.

The plaintiff was born in Saginaw, Michigan, is a graduate of the University of Michigan, as well as of the Michigan State College, and Michigan State Normal College.

The plaintiff brings this action in her behalf as an individual, and in a representative capacity on behalf of ap-

proximately 20,000 other employees of the County of Los Angeles similarly situated. Said other employees are similarly situated, in that they are, and each of them is, employed by said County under and by virtue of the same provisions of the Charter of the County of Los Angeles, (hereinafter called Charter), and the same Rules of the Los Angeles County Civil Service Commission (hereinafter called Rules), and subject to the same provisions of said Charter and Rules respecting examination, selection, appointment, tenure, promotion, demotion, transfer, disciplines, discharge, suspension, classification and rating of efficiency, and are now, or are about to be, subjected to the same "Loyalty Check" hereinafter alleged. The question herein is one of common and general interest to all said 20,000 employees of said County, and said employees are numerous, and it is impractical to bring them all before this Court.

II

(a) Defendant County of Los Angeles, (hereinafter called County) is a political subdivision of the State of California [fol. 3] charged with governmental powers, including the power to sue and be sued.

(b) Defendants, William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, are members of and each of them is a member of, the Board of Supervisors of the County, elected respectively, from the first, second, third, fourth, and fifth supervisor districts of said County. Defendant, Raymond V. Darby is Chairman of said Board of Supervisors.

(c) Defendant, Wayne Allen, is Chief Administrative Officer of the County.

(d) Defendant, Harold W. Kennedy, is the County Counsel of the County.

(e) Defendant, Eugene W. Biscailuz, is the Sheriff of the County.

(f) Defendants, Charles C. Mack, G. H. Newland and T. J. O'Keefe, are members of, and each of them is a member of, the Civil Service Commission of the County.

(g) Defendant, Clifford N. Amsden, is Secretary and Chief Examiner of said Civil Service Commission.

(h) Defendant, Michael Donoghue, is the Registrar of Voters of the County.

(i) Each of the defendants named in subdivision (b) through (h) above, is a resident of the County and engaged in the performance of the duties of their respective offices alleged above, in the City of Los Angeles in the County. [fol. 4] (j) Defendants Allen, Kennedy, Biscailuz and Amsden have been constituted by defendants members of the Board of Supervisors, and continuously since August 26, 1947, have been and now are, members of a Committee ordered and directed to meet, coordinate, supervise and effectuate the Loyalty Check hereinafter alleged. Said defendants will hereinafter be collectively referred to as the Committee.

III

Plaintiff is ignorant of the true names of the defendants sued herein by the fictitious names of I Doe, II Doe, III Doe, V Doe and V Doe, and hereby ask- leave of Court to amend her complaint by inserting the true names of such defendants in the place and stead of such fictitious names, when such true names shall have been ascertained.

IV

On or about April 1, 1947, the Board of Supervisors of the County, comprised of the members alleged in paragraph II (b) hereof, directed that defendants Wayne Allen and Harold W. Kennedy study, prepare and recommend ways and means in which an investigation could be made into the political beliefs and affiliations of all employees of the County, in order to determine whether or not there are any members of the Communist Party of the United States, avowed or otherwise, or any persons who are "commu- [fol. 5] nistic" or "subversive" in the employ of the County, its agencies and districts.

V

Under and by virtue of said direction of said Board of Supervisors, defendants, Wayne Allen and Harold W. Kennedy, did on or about August 15, 1947, submit to said Board of Supervisors their recommendations that there be conducted among the employees of the County a "Loyalty Check." A true and correct copy of said recommendations is attached hereto, marked Exhibit "A" and by this reference made a part hereof as fully as if set forth herein at length, and is hereinafter called the "Loyalty Check."

VI

On or about August 26, 1947, said defendant members of the Board of Supervisors did accept and adopt said "Loyalty Check" and did order and direct that said "Loyalty Check" be put into operation and effectuated.

The defendants, through the defendant Smith, have announced that any employee found to be a Communist or refusing to sign the "loyalty oath and affidavit" will be discharged, the statement by the defendant Smith being, "Any employee found to be a Communist or refusing to sign the loyalty oath and affidavit will be out—period!"

VII

Defendant members of the Committee are now engaged [fol. 6] in the coordination, supervision and effectuation of the "Loyalty Check" and have threatened and do now threaten, and will, unless restrained by this Court, cause plaintiff and all employees similarly situated to be discharged or otherwise penalized in their employment unless they execute the oath and affidavit prescribed and required by paragraph numbered 5 of said "Loyalty Check."

VIII

In the coordination, supervision and effectuation of the "Loyalty Check" defendant members of the Committee have threatened to, intend to, and will, presume that employees of Los Angeles County, (including plaintiff and all employees similarly situated) and who have ever belonged to or directly or indirectly supported or followed any of the organizations or publications listed in said oath and affidavit, are subversive, and will,

(a) Publicly report such employees to the defendant members of the Board of Supervisors as subversive and disloyal, and

(b) Call upon such employees to carry the burden of proving to said defendants that they are not subversive and disloyal, and

(c) Reduce, remove or otherwise discriminate against such employees for failure so to prove.

IX

In the coordination, supervision and effectuation of the [fol. 7] "Loyalty Check" defendant members of the Committee intend to, have threatened to, and unless restrained by this Court, will,

(1) Inquire into the political beliefs of plaintiffs and all employees similarly situated;

(2) Inquire into the political and community organizations and associations of plaintiff and all employees similarly situated;

(3) Require that plaintiff and all employees similarly situated reveal and disclose their political beliefs and opinions, the political and other organizations to which they now belong or have ever since December 7, 1941 belonged, or which they have "directly or indirectly supported, or follows;"

(4) Require that plaintiff and all employees similarly situated reveal and disclose the newspapers, books, magazines or other publications which they have since December 7, 1941, directly or indirectly supported or follows, or do now so support or follow;

(5) Require that plaintiff and all employees similarly situated renounce and forego political opinions, beliefs, associations, organizations, newspapers, books, magazines or other publications considered or deemed by said defendants to be "communistic" or "subversive" or otherwise unorthodox in the discretion of the said defendants;

[fol. 8] (6) Define in their arbitrary and uncontrolled discretion, those thoughts, beliefs and opinions, those political organizations and associations, and those newspapers, books, magazines or other publications which shall be orthodox and unorthodox for plaintiff and all employees similarly situated.

X

In the coordination, supervision and effectuation of the "Loyalty Check," defendant members of the Committee intend to, have threatened to, and unless restrained by this Court, will,

(1) Publicly report to the defendant members of the Board of Supervisors as subversive and disloyal, plaintiff

and all employees similarly situated, or some of them, on account of (a) any opinion or belief now held or held at any time subsequent to December 7, 1941, by said plaintiff or said employees and deemed "subversive" or "communistic" or otherwise unorthodox in the arbitrary discretion of said defendants; (b) membership at any time, past or present, in any political organization or association, or having directly or indirectly supported or followed, at any time, past or present, any political organization or association listed in the oath and affidavit constituting part of said "Loyalty Check"; (c) having directly or indirectly supported or followed at any time, past or present, any news- [fol. 9] paper, book, magazine or other publication listed in the oath and affidavit constituting part of said "Loyalty Check."

(2) Subject to a penalty which may include discharge, plaintiff and all other employees similarly situated, or any of them, on account of, (a) any opinion or belief now held or held at any time subsequent to December 7, 1941, by said plaintiff or said employees and deemed "subversive" or "communistic" or otherwise unorthodox in the arbitrary discretion of said defendants; (b) membership at any time, past or present, in any political organization or association, or having directly or indirectly supported or followed, at any time, past or present, any political organization or association listed in the oath and affidavit constituting part of said "Loyalty Check"; (c) having directly or indirectly supported or followed at any time, past or present, any newspaper, book, magazine or other publication listed in the oath and affidavit constituting part of said "Loyalty Check."

(3) Interfere with the rights of plaintiff or any employees similarly situated if they so elect to join any political party, including the Communist Party, whether or not deemed orthodox or unorthodox by defendant members of the Committee, or support or follow some or all of the principles, tenets or beliefs of any such party.

[fol. 10] XI

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts of defendants in connection therewith are without authority and unlawful in

that said "Loyalty Check" and said acts of defendants discriminate against plaintiff and all employees similarly situated because of their political opinions or affiliations contrary to and in violation of Section 41 of the Charter of the County of Los Angeles.

XII

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts and threatened acts of defendants in connection therewith as alleged in paragraphs VII, VIII, IX and X above, are without authority and unlawful for the reason that they deny to plaintiff and to all employees similarly situated due process of law in violation of the First and Fourteenth Amendments to the Constitution of the United States in that:

(a) They require plaintiff and all employees similarly situated to disclose their political opinions and associations;

(b) They abridge for plaintiff and all employees similarly situated freedom of speech, freedom of opinion, freedom of belief, freedom of association, freedom of the press and the opportunity for free political discussion and [fol. 11] association;

(c) They prescribe or threaten to prescribe that which is orthodox in political belief and association for plaintiff and all employees similarly situated.

XIII

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts and threatened acts of defendants in connection therewith as alleged in paragraphs VII, VIII, IX and X above, are without authority and unlawful because they deny plaintiff and all employees similarly situated due process of law contrary to the First and Fourteenth Amendments to the Constitution of the United States and Article I, Section 9 thereof in that they subject said plaintiff and said employees to penalties which may include discharge by reason of opinions, speech, associations, newspapers, books, magazines or other publications and acts held, engaged in, belonged to, participated in or read, prior to the time the said "Loyalty Check" was adopted by the defendants, William A. Smith, Leonard J.

Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, members of the Board of Supervisors of the County of Los Angeles, and is thereby an ex post facto law and a bill of attainder.

XIV

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts of defendants in [fol. 12] connection therewith as alleged in paragraphs VII, VIII, IX and X above, are without authority and unlawful because they are an ex post facto law contrary to and in violation of Article I, Section 16 of the Constitution of the State of California in that they subject plaintiff and all employees similarly situated to penalties which may include discharge by reason of opinions, speech, associations, newspapers, books, magazines or other publications and acts held, engaged in, belonged to, participated in or read prior to the time the said "Loyalty Check" was adopted by the defendants, William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, members of the Board of Supervisors of the County of Los Angeles, and it is thereby an ex post facto law and a bill of attainder.

XV

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts of the defendants, William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, members of the Board of Supervisors of the County of Los Angeles in connection therewith, and the acts of the defendants, Wayne Allen, Harold A. Kennedy, Eugene W. Biscailuz, and Clifford Ameden, are without authority and unlawful because they deny plaintiffs and all employees similarly situated of due process of law contrary to the Fourteenth Amendment to the Constitution of the United States and Article I, Sec- [fol. 13] tion 9, thereof, and Articles I, Section 16 and Article VI, Section 1 of the Constitution of the State of California in that they constitute a finding of fact and determination that the Communist party, Communism and Communists are illegal and subversive, that they advocate the overthrow of the government by force and violence, the authority of which to make such finding and determination are by virtue thereof violative of the division of govern-

mental powers prescribed in the Constitution of the United States and of the State of California and are a bill of attainder.

XVI

The said "Loyalty Check" is void on its face and as authoritatively construed, and the acts of defendants in connection therewith as alleged in paragraphs VII, VIII, IX and X above, are unlawful and without authority because they deprive plaintiff and all employees similarly situated of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States in that they deny to said plaintiff and said employees equal opportunity for employment and establish conditions of employment not applicable to employees generally and is a wholly arbitrary, unreasonable and discriminatory classification of employees based upon their exercise of their constitutional rights to freedom of political and other thought, opinion, belief, conscience, speech, press, association and of organization based upon a wholly unascertainable, indefinite, vague, ambiguous and uncertain standard of classifica-
[fol. 14] tion.

XVII

The said "Loyalty Check" is void on its face and as authoritatively construed, and the acts of defendants in connection therewith are without authority and unlawful because they deny plaintiffs and all employees similarly situated due process of law contrary to the Fourteenth Amendment to the Constitution of the United States in that they discriminate against said plaintiffs and said employees and assess penalties against them without prescribing any ascertainable standard therefor.

XVIII

The said "Loyalty Check" is void on its face and as authoritatively construed, and the acts of defendants Wayne Allen, Harold W. Kennedy, Eugene W. Biscailuz and Clifford Amsden, in connection therewith, as alleged in paragraph VIII above, are without authority and unlawful because they deny plaintiff and all employees similarly situated due process of law and equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States in that they establish a presumption that any county employee who has ever belonged to or di-

rectly or indirectly supported or followed any organization listed in the oath and affidavit is now subversive and said presumption has no rational or other relationship be-
[fol. 15] tween the fact of an employee's membership in or having directly or indirectly supported or followed any such organization and the fact that he is now subversive, and further in that the creation of such presumption gives the employee so affected no reasonable or other opportunity to submit the facts in his defense.

XIX

Plaintiff and all employees similarly situated have no plain, adequate, or speedy remedy at law, and by this action a multiplicity of suits on behalf of some 20,000 employees of the County of Los Angeles seeking protection from the void and unlawful acts and threatened acts of the defendants will be obviated.

XX

By reason of the "Loyalty Check" and the unlawful acts and threatened acts of the defendants as alleged herein, plaintiff and all employees similarly situated have suffered and will suffer irreparable damage which cannot be compensated by monetary damages assessed by a court of law, in that they will be subjected to an unlawful and unconstitutional inquiry into their political opinions and affiliations; they will be required to disclose to defendants their opinions and affiliations under pain of a penalty which may include discharge; they will be publicly stigmatized as subversive and disloyal by reason of their political opinions and beliefs.

[fol. 16] As and for a second count and cause of action, plaintiff alleges:

I

Realleges as fully as if set forth herein at length, all of the allegations of her first cause of action in this amended complaint.

II

There is an actual controversy between plaintiff, and employees similarly situated on whose behalf this action is brought, and the defendants in the following respects:

1. Whether the oath and affidavit required by defendants to be executed as hereinabove alleged, deprives plaintiff and

all employees similarly situated of their constitutional rights and privileges, as hereinabove set forth.

2. Whether the presumption applied by the defendants, that County employees who have ever been members of or directly or indirectly supported or followed any of the organizations listed in said oath and affidavit, is subversive and disloyal, violates the constitutional rights and privileges of plaintiffs and all employees similarly situated, as hereinabove set forth.

3. Whether the threat by defendants publicly to report as disloyal and subversive all County employees who have ever belonged to or directly or indirectly supported or fol-
[fol. 17] lowed any of the organizations listed in said oath and affidavit, violates the constitutional rights and privileges of plaintiff and all employees similarly situated, as hereinabove set forth.

4. Whether the imposition of the burden of proof that they are not subversive or disloyal upon such County employees who have ever belonged to or directly or indirectly supported or followed any of said organizations, as hereinabove alleged, violates the constitutional rights and privileges of plaintiff and all employees similarly situated, as hereinabove set forth.

5. Whether the threatened action of defendants to discharge or otherwise penalize any County employee who fails to carry such burden of proof, as aforesaid, violates the constitutional rights and privileges of plaintiff and all employees similarly situated, as hereinabove set forth.

6. Whether the threatened action of defendants in inquiring into the political opinions and affiliations, newspapers, books and other publications of all County employees, or which they have supported or followed, violates the constitutional rights and privileges of plaintiff and all employees similarly situated, as hereinabove set forth.

7. Whether the threatened action of defendants in requiring that County employees reveal and disclose their political opinions and affiliations, newspapers, books and other
[fol. 18] publications, or which they have supported or followed, violates the constitutional rights and privileges of plaintiff and all employees similarly situated, as hereinabove set forth.

8. Whether the threatened action of defendants in defining in their arbitrary and uncontrolled discretion to political opinions and affiliations, and those newspapers, books, magazines or other publications which shall be orthodox or unorthodox, violates the constitutional rights and privileges of plaintiff and all other employees similarly situated, as hereinabove set forth.

9. Whether the Loyalty Check is void on its face and as authoritatively construed for the reason that it is violative of and contrary to the provisions of the Constitutions of the United States and the State of California, as hereinabove alleged.

10. Whether the Loyalty Check and the acts and threatened acts of defendants in connection therewith are contrary to and in violation of Section 41 of the Charter of the County of Los Angeles.

11. Whether under the provisions of the Charter, including but without limitations Sections 34 (13) and 41 thereof, and of the Rules and Regulations of the Los Angeles County Civil Service Commission made and issued in connection therewith, and the provisions of the Constitutions of the United States and the State of California herein- [fol. 19] above alleged, plaintiff and all employees similarly situated may be required to execute said oath and affidavit as a condition of continued employment.

12. Whether under the provisions of the Charter, including but without limitations Section 34 (13) and 41 thereof, and of the Rules and Regulations of the Los Angeles County Civil Service Commission made and issued in connection therewith, and the provisions of the Constitutions of the United States and the State of California hereinabove alleged, defendants, or any of them, may impose upon plaintiff or any employees similarly situated any penalty or discrimination for failure or refusal to execute said oath and affidavit.

13. Whether by reason of the provisions of the Charter, including but without limitations Section 34 (13) and 41 thereof, and of the Rules and Regulations of the Los Angeles County Civil Service Commission made and issued in connection therewith, and the provisions of the Constitutions of the United States and the State of California here-

inabove alleged, any order or requirement by defendants, or by any officer or agent of Los Angeles County acting under their direction or supervision, that plaintiff or any employees similarly situated execute said oath and affidavit is a lawful order or requirement as to plaintiff and any employees similarly situated.

[fol. 20] 14. Whether by reason of the provisions of the Charter, including but without limitations Section 34 (13) and 41 thereof, and of the Rules and Regulations of the Los Angeles County Civil Service Commission made and issued in connection therewith, and the provisions of the Constitutions of the United States and the State of California hereinabove alleged, plaintiff and all employees similarly situated may fail or refuse to execute said oath and affidavit without being discharged, discriminated against, or otherwise penalized on account of said failure or refusal or because said failure or refusal constitutes disobedience of a lawful order of a superior.

Wherefore, plaintiff prays:

1. For a preliminary and final injunction restraining and prohibiting defendants, and each of them, their agents, employees, successors, from

(a) Requiring, directly or indirectly, or by any means whatsoever plaintiff or any employee similarly situated, to execute the oath and affidavit prescribed in paragraph numbered 5 of the Loyalty Check.

(b) Discriminating with respect to hire, tenure, or any term or condition of employment, or in any way, directly or indirectly, against plaintiff or any employee similarly situated, for refusal or failure to execute said oath and affidavit.

(c) Creating, establishing or applying, directly or in-
[fol. 21] directly, or by any means whatsoever, any presumption of inference that plaintiff, or any employee similarly situated, are subversive from the fact that they have at any time belonged *or* or directly or indirectly supported or followed any organization listed in said oath and affidavit.

(d) Requiring any plaintiff or any employee similarly situated to prove that he is not subversive and imposing on any such employee any burden of proof because of or on

account of having at any time belonged to or directly or indirectly supported or followed any organization listed in said oath and affidavit.

(e) Requiring, directly or indirectly, or by any means whatsoever, that plaintiff, or any employee similarly situated, reveal or disclose or otherwise make known to defendants their political opinions or affiliations, or the political utterances they have made or the writings or publications they have written, participated in or read.

(f) Inquiring in any way, directly or indirectly, through check of political registrations, files or agencies of the County or any other government, the oath and affidavit prescribed in the Loyalty Check, or by any means whatsoever, into the political opinions, affiliations, utterances, publications of plaintiff or any employee similarly situated.

(g) Reporting publicly as subversive or disloyal, plaintiff [fol. 22] or any employee similarly situated, for or on account of failure or refusal to execute the aforesaid oath and affidavit, or any political opinion, affiliation speech, utterance, publication of said plaintiff or said employees.

2. For a judgment declaring that defendants may not do or require to be done the things sought to be enjoined as prayed above, for the reason that the doing or requiring to be done of these things violates the provisions of the Charter of the County of Los Angeles and the Constitutions of the United States and of the State of California, in the respects alleged in the Complaint.

3. For such other and further relief as to this Court may seem meet and just.

4. For costs of suit herein.

Respectfully submitted, A. L. Wirin & Fred Okrand,
by A. L. Wirin, Attorneys for Plaintiff.

[fol. 23] EXHIBIT "A" TO AMENDED COMPLAINT

Subject: Loyalty Check

On April 1, 1947, the Board of Supervisors directed that the Chief Administrative Officer and the County Counsel study, prepare, and recommend ways and means in which a proper investigation can be made to determine whether or not there are any Communists, avowed or otherwise, that may be employed by the County of Los Angeles, its agencies and districts.

As the result of a preliminary investigation directed towards the ascertaining of reasonable and justified procedure which will accomplish the desire of your Honorable Board, the following is recommended:

1. The County Auditor will prepare in triplicate an alphabetical list of the names of the approximately 20,000 persons on his payroll cards. Mr. J. H. Lowery, the County Auditor, has cooperated fully in this matter and agreed to furnish such lists.

2. Present one of those lists to Michael Donoghue, the Registrar of Voters, with the request that he check this list against the names of any persons who have registered as Communists at any time during the past ten years. Mr. Donoghue has heartily agreed to make this check.

3. Request the Federal Bureau of Investigation to check this list against the subversive file of the Federal Bureau of Investigation.

4. Require all officers and employees coming under the jurisdiction of the Board of Supervisors to execute on oath of the type and character attached hereto.

5. Require such officers and employees to execute an affidavit setting forth every name that such person has ever been known by, and setting forth further that he has never [fol. 23a] at any time been a number of, or supported or contributed to, any organization advocating the over-throw of our form of government, and further declaring in such affidavit that he has never at any time been a member of, or supported or contributed to, any organization listed in the affidavit, which organizations have been mentioned in one or more of the reports of the Joint Fact-Finding Committees of 1943, 1945, and 1947, on un-American activities in

California, filed and accepted by the California Legislature on the following dates: (1943) April 9, 1943, 55th Session, Senate Journal, page 1145; (1945) June 14, 1945, 56th Session, Senate Journal, page 3856; (1947) March 24, 1946, 57th Session, Assembly Journal, page 20.

With reference to the treatment which has been given to the several reports of the Joint Fact-Finding Committee, appointed by the California Legislature, we wish to make it clear that the mentioning of the name of an organization in these reports does not necessarily mean and is not intended to convey the implication that they are subversive or Communistic or have ever engaged in any subversive or Communistic activities.

Part of the technique of subversively inclined Communists is to secretly infiltrate organizations with the purpose of eventually achieving some subversive purpose. In the meantime, rank and file members often are enrolled wholly innocent of subversive possibilities but attracted to the organization by its publicly alleged purposes which have every appearance of being patriotic and worthy.

A careful reading of the Tenney reports will disclose that there are instances in the reports where organizations are named, but it was not claimed by the Fact-Finding Committee that such organizations were in themselves subversive, but that subversive or Communistic organizations were endeavoring to place such organizations under their influence. We believe, however, that in ferreting out Communism it is a practical approach to start with the organizations which are known to exist for the purpose of [fol. 23b] over-throwing our government, or are known to be subversive or Communistic, and then give careful consideration to such other organizations as the reports of the Joint Fact-Finding Committee of the California Legislature indicates might have come under some subversive or Communistic influence.

By way of summary, it is to be emphasized that the organizations set forth in the list, which is a part of the affidavit, that by their designation there it is not intended to infer that they are necessarily subversive or Communistic, as of course we have no facilities for knowing their true character. For this reason each employee, by indicating that he is or was a member, should understand that he will be given ample opportunity to indicate that the organization was not subversive or Communistically inclined, or that he

personally was not an advocate of subversive or Communistic doctrines.

6. Appoint a committee consisting of the Chief Administrative Officer, the Sheriff, the Secretary of the Civil Service Commission, and the County Counsel, to meet, coordinate, and supervise the loyalty check program, and keeping its information confidential at all times, except when reports are made as outlined in paragraph 8.

7. Channel all information and reports to this committee, which shall keep all information confidential. Authorize the committee to use the facilities of the Sheriff's office for the purpose of seeking additional information relative to specific cases.

8. Require the committee to report periodically to the Board of Supervisors if any known subversively inclined persons are located with a recommendation by the committee in connection with each particular person in question.

Very truly yours, Wayne Allen, Chief Administrative Officer; Harold W. Konnedy, County Counsel.

ENCL.

[fol. 23c] EXHIBIT "A"

Oath and Affidavit

Department .....

A. Oath of Office or Employment

I, ..., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of California, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office or employment on which I am about to enter or am now engaged. So Help Me God.

B. Affidavit Re Subversive Activity

I do further swear (or affirm) that I do not advocate, nor am I now a member, nor have I been since December 7, 1941,

a member of any political party or organization that advocates the over-throw of the Government of the United States, or State of California, or County of Los Angeles, by violence, except those specified as follows: .....
and that during such time as I am an officer or employee of the County of Los Angeles, I will not advocate nor become a member of any political party or organization that advocates the over-throw of the Government of the United States, or State of California, or County of Los Angeles, by force or violence.

C. Affidavit Re Aliases

I do further swear (or affirm) that I have never used or been known by any names other than those listed as follows: .....

[fol. 23d] D. Membership In Organizations

I do further swear (or affirm) that I have never been a member of, or directly or indirectly supported or followed any of the hereinafter listed organizations, except those which I indicate by an X mark.

Name	Volume	Page
Abraham Lincoln Brigade	43	140
Academic and Civil Rights Council of California	43	97
	47	103
After School Clubs	43	300
Agitprop	43	35
American Artists Congress	47	82
America for Americans	43	280
American Comm. for a Free Indonesia	47	56
American Comm. for Democracy and Intellectual Freedom	47	202
American Comm. for Protection of the Foreign Born	47	452
		202
		219
American Comm. to Save Refugees	47	45
American Communications Assn.	43	141
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		163
		210

Name	Volume	Page
American Communist Party	43	116
	47	7
American Council on Soviet Relations	47	202
American Federation for Political Unity	43	96
American Friends of the Chinese People	47	45
American Guard	43	259
American League Against War and Fascism	43	93
American League for Peace and Democracy	43	135
	47	202
American League of Christian Women	43	269
American Peace Mobilization	43	96
American Russian Institute	47	88
		103
American Society for Technical Aid for Spain	47	313
American Student Union	43	115
American Veterans Comm.	47	230
[fol. 23e] American Writers Congress	45	122
American Youth Congress	43	98
American Writers School	47	70
American Youth for Democracy	47	21
Anti-Axis Comm.	43	345
Anti-Hearst Examiner	43	119
Anti-Nazi League	43	42
Anti-Nazi League of Hollywood	43	96
Anti-ROTC Committee	43	98
Arcos Limited	43	98
Artist Front to Win the War	47	191
Arts Advisory Council	47	94
Authors League	47	286
Ballila	43	301
Bay Area Council Against Discrimination	47	209
California Conference for Democratic Action	47	170
California Labor School	47	47
California Youth Legislature	43	96
	47	209
Contro Anti-Communista	43	201
China Aid Council of American League for Peace and Democracy	47	313
Citizens Comm. for Better Education	47	56

Name	Volume	Page
Citizens Comm. for Defense of Mexican-American Youth	43	216
Citizens Comm. to Free Earl Browder	47	213
Citizens Comm. to Support Labors Right	47	187
Citizens No Foreign Wars Coalition	43	251
Civil Rights Congress	47	55
Civil Rights Council for Northern California	47	209
Comintern	43	39
Comm. for Boycott Against Japanese Aggression	47	202
Comm. for Defense of Mexican-American Youth	47	97
Comm. for Support of S. W. Corson	47	210
[fol. 23f] Comm. Protecting Attacks Against the Abraham Lincoln Brigade	47	210
Comm. to Defend America by Keeping Out of War	47	202
Communist International	43	93
Communist Party's Little Theatre	47	73
Communist Workers School	47	67
Communist Political Assn.	47	8
Conference for Democratic Action	47	247
Consumers National Federation	47	210
Contemporary Theatre	43	130
Co-ordinating Commission to Lift Embargo (to Spain)	47	202 210
Council for Pan American Democracy	47	210
Cultural and Professional Projects Assn.	43	149
Congress of Mexican and Spanish-Mexican Peoples of U. S.	47	210
Daily Worker	43	98
Democratic Youth Federation	43	161
Elizabeth Curley Flynn Club	47	35
Elizalde Anti Discrimination Comm.	47	56
Emergency Comm. to Aid Spain	47	202
Emergency Trade Union Conference to Aid Spanish Democracy	47	202
Ex Combattenti Society	43	287
Farmer Labor Party	43	98
Federation of Architects, Engineers, Chemists and Technicians	43	135

Name	Volume	Page
	47	89
Field Workers School	43	87
First Congress of Mexican and Spanish-American Peoples of U. S.	47	45
Friends of Soviet Russia	47	313
Friends of Soviet Union	43	119
	47	313
German-American Bund	43	383
Greater New York Emergency Conference on Inalienable Rights	47	210
Harry Bridges Defense Comm.	47	202
[fol. 23g] Hold the Price Line Comm.	47	56
Hollywood Anti Nazi League	43	135
	47	70
Hollywood Cultural Commission	43	148
Hollywood Community Radio Group	47	179
Hollywood Independent Citizens Comm. of Arts, Sciences and Professions	47	33
Hollywood League for Democratic Action	47	33
Hollywood Theatre Alliance	43	91
Hollywood Writers Mobilization	47	34
Humanist Society of Friends	43	119
Independent Citizens Comm. of Arts, Sciences and Professions	47	227
International Labor Defense	43	98
	47	189
International Red Aid	47	214
International Workers Order	47	94
Jewish Peoples Committee	47	43
John Reed Clubs	47	68
Joint Committee for Trade Union Rights	47	202
Joint Anti-Fascists Refugee Committee	47	45
League Against War and Fascism	47	70
League for Democratic Action	47	70
League for Peace and Democracy	43	91
League for American Writers	43	149
League for Struggle for Negro Rights	47	115
League of Women Shoppers	43	125
	47	309
League to Save America First	43	258
Los Angeles County Political Commission	43	159
Los Angeles County Trade Union Commission	43	102

Name	Volume	Page
Mooney Defense Committee	43	91
Mobilization for Democracy	47	45
Motion Picture Cooperative Buyers Guild	43	108
Motion Picture Democratic Committee	43	95
		161
	47	170
[fol. 23h] National Citizens Political Action Committee	47	236
National Committee to Abolish The Poll Tax	47	45
National Council on Soviet American Friendship	47	219
National Emergency Conference	47	210
National Federation for Constitutional Liberties	47	219
National Negro Women's Council	47	45
National Negro Congress	43	185
	47	163
National Students League	43	99
New Masses	43	98
New Theatre League	43	138
North American Commission to Aid Spanish Democracy	43	140
	47	190
Pen and Hammer Club	43	91
Peoples Council of America	43	91
Peoples Front	43	100
Progressive Comm. to Rebuild the American Labor Party	47	210
Refugee Scholarship and Peace Comm.	47	202
Second Annual California Model Legislature	43	91
Simon J. Lubin Society	43	86
	47	255
Social Problems Club	43	99
Spanish Relief Committee	43	91
Student Rights Assn.	43	99
United Farmers League	43	37
United Federal Workers	47	218
Western Workers	43	70
	47	36
Workers Alliance	43	135
	47	70

Name	Volume	Page
World Committee Against War	43	93
Workers School	47	70
Young Communist League	43	63
	47	21
The Young Pioneers	43	66

[fol. 23i]

Subscribed and sworn to before me this — day of ——, 1947. J. F. Moroney, County Clerk, by —— ——, Deputy.

[fol. 24] [File endorsement omitted.]

[fol. 25] In Superior Court of Los Angeles County

Demurrer to Plaintiff's Amended Complaint—Filed February 10, 1948

Come now the defendants in the above entitled action and demur, both generally and specially, to plaintiff's amended complaint on the following grounds, to wit:

I

Plaintiff's first cause of action does not state facts sufficient to constitute a cause of action.

II

Plaintiff's first cause of action, and particularly paragraph VI thereof, is uncertain as it does not appear therefrom whether the defendant William A. Smith made the statements alleged in said paragraph in his official capacity as a member of the Board of Supervisors at a time when said Board was meeting as a Board of Supervisors, or whether the said statements were made by the defendant William A. Smith as a private citizen.

III

That the first cause of action, and more particularly paragraph VII thereof is uncertain in the following respects, to wit:

(1) It is uncertain whether any of the threats therein, or any of the actions alleged to be taken, are or will be

the acts of the defendant members of the Loyalty Check [fol. 26] Committee as individuals, or whether the alleged threats are or will be that of the Loyalty Check Committee itself acting in its official capacity.

(2) Said paragraph VII is uncertain in that it does not appear therein what the factual basis is for the conclusion that threats have been or will be made, or that plaintiff will be caused to be discharged or otherwise penalized.

(3) Said paragraph VII is uncertain because it does not appear therefrom whether the acts or threats complained of are within or without the authority of the Loyalty Check Committee as described by the order of the Board of Supervisors dated August 26, 1947.

IV

The first cause of action, and particularly paragraph VIII thereof, is uncertain in the following respects, to wit:

(1) It is uncertain whether any of the threats alleged therein, or any of the actions alleged to be taken, are or will be the acts of the defendant members of the Loyalty Check Committee as individuals, or whether the alleged threats and acts are or will be that of the Loyalty Check Committee itself, acting in its official capacity.

(2) Paragraph VIII is uncertain as it does not appear therefrom what the factual basis is for the conclusion that defendants "will presume that employees . . . who have [fol. 27] ever belonged to, or directly or indirectly supported or followed any of the organizations or publications listed in said oath and affidavit are subversive . . ." and will then take the action described in paragraphs (a), (b) and (c) of said paragraph VIII.

(3) Paragraph VIII and particularly sub-paragraph (b) thereof, is uncertain in that it does not appear therefrom what the factual basis is for the conclusion that employees will be called upon to carry the burden of proving to said defendants that they are not subversive and disloyal.

(4) Paragraph VIII and particularly sub-paragraph (c) thereof, is uncertain in that it does not appear from said paragraph what factual basis exists for the conclusion that the defendants will reduce, remove or otherwise dis-

criminate against employees for failure to prove that they are not subversive and disloyal.

(5) Said paragraph VIII is uncertain in its entirety because it is impossible to ascertain therefrom whether the threatened acts complained of are within or without the authority of the Loyalty Check Committee, as described by the order of the Board of Supervisors, dated August 26, 1947.

V

The first cause of action, and particularly paragraph IX [fol. 28] thereof, is uncertain in the following facts, to wit:

(1) It is uncertain whether any of the threats alleged therein, or any of the acts alleged to be taken, are or will be the acts of the defendant members of the Loyalty Check Committee as individuals, or whether the alleged threats and acts are or will be that of the Loyalty Check Committee itself, acting in its official capacity.

(2) Paragraph IX is uncertain as it does not appear therefrom what the factual basis is for any of the conclusions contained in sub-paragraphs (1), (2), (3), (4), (5) and (6) of paragraph IX of plaintiff's complaint.

(3) Said Paragraph IX, and the whole thereof, is further uncertain in its entirety because it is impossible to ascertain therefrom whether the threatened acts complained of are within or without the authority of the Loyalty Check Committee as described by the order of the Board of Supervisors dated August 26, 1947.

VI

The first cause of action, and particularly paragraph X thereof, is uncertain in the following respects, to wit:

(1) It is uncertain whether any of the threats alleged therein, or any of the actions alleged to be taken are or will be the acts of the defendant members of the Loyalty Check Committee as individuals, or whether the alleged threats and acts are or will be that of the Loyalty Check [fol. 29] Committee itself acting in its official capacity.

(2) Paragraph X is uncertain as it does not appear therefrom what the factual basis is for any of the conclusions contained in sub-paragraphs (1), (2) and (3) of said paragraph.

(3) Said paragraph X is further uncertain because it is impossible to ascertain therefrom whether the threatened acts complained of are within or without the authority of the Loyalty Check Committee as described by the order of the Board of Supervisors dated August 26, 1947.

VII

Plaintiff's first cause of action, and particularly paragraph XI thereof, is uncertain in the following respects to wit:

(1) It cannot be determined therefrom whether the "acts of defendants" referred to therein is a reference to acts of the Board of Supervisors or members of the Loyalty Check Committee, or all of them, or any number of them.

(2) Paragraph XI is uncertain in that it cannot be ascertained therefrom what the factual basis is for the conclusion that defendants will discriminate against plaintiff and all employees similarly situated because of their political opinions or affiliations.

(3) Paragraph XI is further uncertain as it is impossible to determine from the conclusions of the plaintiff whether [fol. 30] said acts threatened or otherwise alleged generally in paragraph XI are within or without the scope of the authority of the Loyalty Check Committee as set forth in the order of the Board of Supervisors adopted August 26, 1947.

VIII

Paragraph XII is uncertain for all of the reasons that paragraphs VII, VIII, IX and X of plaintiff's first cause of action are uncertain.

IX

Paragraph XIII is uncertain for all of the reasons that paragraphs VII, VIII, IX and X of plaintiff's first cause of action are uncertain.

X

Paragraph XIV is uncertain for all of the reasons that paragraphs VII, VIII, IX and X of plaintiff's first cause of action are uncertain.

XI

Plaintiff's first cause of action, and particularly paragraph XV thereof, is uncertain as it cannot be ascertained therefrom what acts by the defendants are without authority and unlawful.

XII

That paragraph XVI is uncertain for all of the reasons that paragraphs VII, VIII, IX and X of plaintiff's first cause of action are uncertain.

[fol. 31]

XIII

That plaintiff's first cause of action, and particularly paragraph XVII ther-of, is uncertain in the following respects, to wit:

(1) It cannot be determined therefrom whether the "acts of the defendants" referred to therein is a reference to the acts of the Board of Supervisors or members of the Loyalty Check Committee, or of all of them, or any number of them.

(2) Said paragraph is uncertain for the reason that it cannot be determined therefrom what acts of the defendants will discriminate against plaintiff.

(3) Paragraph XVII is uncertain as it does not appear therefrom what the factual basis is for the conclusion that the acts of the defendants will result in a discrimination against the plaintiff.

(4) Paragraph XVII is uncertain in that it does not appear therefrom what the factual basis is for the conclusion that the defendants will assess penalties against plaintiff without ascribing any ascertainable standard therefor.

(5) Paragraph XVII is further uncertain in that it is impossible to determine from the conclusions of the plaintiff whether said acts threatened or otherwise alleged generally in said paragraph will be within or without the scope of the Loyalty Check Committee as set forth in the order [fol. 32] of the Board of Supervisors adopted August 26, 1947.

XIV

Plaintiff's first cause of action and particularly paragraph XVIII is uncertain in that it does not appear therefrom or from paragraph VIII what the factual basis is for the conclusion that the acts of defendants, Wayne Allen, Harold W. Kennedy, Eugene W. Biscailuz and Clifford N. Amsden establish a presumption that "any county employee who has ever belonged to or directly or indirectly supported or followed any organization listed in the oath and affidavit is now subversive."

XV

That plaintiff's first cause of action, and particularly paragraph XX, is uncertain in the following respects, to wit:

(1) It cannot be determined therefrom what specific acts and threatened acts of the defendants will result in irreparable damage to plaintiff.

(2) It cannot be determined therefrom whether the plaintiff is referring to acts of the Board of Supervisors, or members of the Loyalty Check Committee, or all of them, or any of them.

(3) Said paragraph XX is further uncertain as it is impossible to determine from the conclusions of the plaintiff whether said acts threatened or otherwise alleged generally in paragraph XX are within or without the scope [fol. 33] of the Loyalty Check Committee as set forth in the order of the Board of Supervisors adopted August 26, 1947.

(4) Paragraph XX is uncertain as it does not appear therefrom what the factual basis is for the conclusion that plaintiff will be publicly stigmatized as subversive and disloyal by reason of political opinions and beliefs.

(5) Paragraph XX is uncertain as it does not appear therefrom what the factual basis is for the conclusion that plaintiff will be required to disclose to defendants her opinions and affiliations under pain of penalty which may include discharge.

XVI

Plaintiff's first cause of action in its entirety is uncertain in that plaintiff alleges she will be presumed subversive and disloyal, will be stigmatized as subversive and disloyal, and will be discharged, discriminated against and assessed penalties, and must renounce and forego her political beliefs and opinions, but nowhere in said complaint does plaintiff allege that she has directly or indirectly supported or been a member of any of the organizations listed in the loyalty check order as pleaded by reference in plaintiff's amended complaint, nor does she allege that she has ever or now does advocate the overthrow of government by force or violence.

[fol. 34]

XVII

That the first cause of action is ambiguous for the same reasons that it is uncertain.

XVIII

That the first cause of action is unintelligible for the same reasons that it is uncertain.

Second Cause of Action

Come now defendants and demur both generally and specially to plaintiff's second cause of action on the following grounds, to wit:

I

That plaintiff's second cause of action fails to state facts sufficient to constitute a cause of action.

II

That plaintiff's second cause of action, and particularly paragraph I thereof, is uncertain as the same incorporates paragraphs VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII and XX of plaintiff's first cause of action as a part thereof and that said paragraphs incorporated are uncertain for all of the reasons as stated in defendants' demurrer to plaintiff's first cause of action.

III

Plaintiff's second cause of action, and particularly paragraph II thereof, is uncertain for the following reasons, to wit:

[fol. 35] (1) Paragraph II, and particularly subparagraphs (2), (3), (4), (5), (6), (7), and (8) are uncertain for the reason that apart from the conclusions of plaintiff, it cannot be ascertained therefrom what the factual basis is for any of the generalizations therein contained with reference to threatened action by defendants and by virtue of which a controversy is alleged to exist.

(2) Paragraph II, and particularly subparagraphs (1), (2), (3), (4), (5), (6), (7), (8), and (10) thereof are uncertain in that it cannot be determined therefrom whether the allegation "defendants" referred to therein is a reference to acts of the members of the Board of Supervisors or members of the Loyalty Check Committee, or all of them, or any number of them, and further whether said "defendants" are acting as individuals or in their official capacity.

(3) Paragraph II and particularly subparagraphs (1), (2), (3), (4), (5), (6), (7), (8), and (10) thereof are uncertain in that it is impossible to ascertain if any of the defendants are members of the Loyalty Check Committee meeting and acting as the Loyalty Check Committee, whether their acts are within or without the scope and authority of the Loyalty Check order by the Board of Supervisors dated August 26, 1947.

(4) Sub-paragraph (11) of paragraph II is uncertain for the reason that it cannot be ascertained therefrom [fol. 36] what the factual basis is for the conclusion that execution of the oath and affidavit is "a condition of continued employment."

(5) Sub-paragraph 12 of Paragraph II is uncertain in that it cannot be ascertained therefrom what the factual basis is for the conclusion by plaintiff that defendants may impose upon plaintiff any penalty or discrimination for failure or refusal to execute said oath and affidavit.

(6) Sub-paragraph 14 of paragraph II is uncertain in that it cannot be ascertained therefrom whether plaintiff

intends to and will hereafter fail and refuse to execute the said oath and affidavit.

IV

Plaintiff's second cause of action is uncertain in that she alleges that a controversy between plaintiff and defendants exists but she does not allege any facts with respect to direct or indirect support or membership in any of the organizations listed in the Loyalty Check Order as pleaded by reference in plaintiff's amended complaint, nor does she allege that she has ever or now does advocate the overthrow of government by force and violence.

V

That plaintiff's second cause of action is ambiguous for the same reasons that it is uncertain.

VI

That plaintiff's second cause of action is unintelligible [fol. 37] for the same reasons that it is uncertain.

Wherefore defendants pray that the demurrer be sustained without leave to amend; that plaintiff take nothing by this action; that the same be dismissed; that defendants have judgment against plaintiff for defendants' costs incurred herein; and for such other and further relief as to the Court may seem meet and proper in the circumstances.

Harold W. Kennedy, County Counsel, and Gerald G. Kelly, Deputy County Counsel, and Robert L. Trapp, Deputy County Counsel, Attorneys for Defendants.

We, Harold W. Kennedy, County Counsel, and Gerald G. Kelly, Deputy County Counsel, and Robert L. Trapp, Deputy County Counsel, attorneys for the above-named defendants, do hereby certify that the above demurrer to plaintiff's complaint is not interposed for the purpose of delay and that in our opinion the issues therein raised are well taken in law.

Harold W. Kennedy, County Counsel, and Gerald G. Kelly, Deputy County Counsel, and Robert L. Trapp, Deputy County Counsel, Attorneys for Defendants.

[fol. 38] [File endorsement omitted.]

[fol. 39] In Superior Court of Los Angeles County

Amendment to Amended Complaint for Injunction and for Declaratory Relief—Filed March 1, 1948

Leave of court being first had, the plaintiff files this amendment to amended complaint for injunction and for declaratory relief:

The amended complaint for injunction and for declaratory relief is by this Amendment amended as follows:

The following is added and inserted in said amended complaint in the first cause of action thereof, at page 11, line 19, and immediately following Paragraph XVIII of said amended complaint:

XVIII A

Plaintiff refuses to execute the oath and affidavit aforesaid for the reason that she deems such oath and affidavit, and the order of the Board of Supervisors and its members requiring the plaintiff to execute said oath and affidavit to violate the rights of the plaintiff as aforesaid.

The following is added to and inserted in said amended complaint in the second cause of action thereof, at page 13, line 6, following paragraph I of said second cause of action in said amended complaint:

IA

Plaintiff refuses to execute the oath and affidavit afore-
[fol. 40] said for the reason that she deems such oath and affidavit, and the order of the Board of Supervisors and its members requiring the plaintiff to execute said oath and affidavit to violate the rights of the plaintiff as aforesaid.

A. L. Wirin & Fred Okrand, by A. L. Wirin, Attorneys for Plaintiff.

(Verification)

(Affidavit of Service by Mail—1013a, C.C.P.)

State of California,
County of Los Angeles, ss:

Lucy Aoki, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the county of

Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above entitled action; that affiant's business address is: 257 South Spring Street, Los Angeles 12, California, that on the 27th day of February, 1948, affiant served the within Amendment to Amended Complaint for Injunction and for Declaratory Relief, on the defendants in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said defendants at the office address of said attorney, as follows: "Gerald G. Kelly, Esq., Deputy County Counsel, 1100 Hall of Records, Los Angeles 12, California"; and [fol. 41] by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United Stat-s Mail at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is a delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

Lucy Aoki.

Subscribed and sworn to before me this 27th day of February, 1948. Miwako Yanamoto, Notary Public in and for said County and State of California. My Commission Expires Sept. 28, 1951. (Seal.)

[File endorsement omitted.]

[fol. 42] In Superior Court of Los Angeles County

Order Sustaining Demurrer

March 5, 1948 Department 34

(Entered March 12, 1948)

Honorable Clarence M. Hanson, Judge Presiding

534177 (Minute Order)

Demurrer to Amended Complaint having been heretofore submitted is sustained without leave to amend. The restraining order is discharged.

[fol. 43] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 534177

JULIA LEARNED STEINER, Plaintiff,

vs.

RAYMOND V. DARBY, et al., Defendants

JUDGMENT OF DISMISSAL

In this action the defendants County of Los Angeles, William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger Jessup, and each of them as members of the Board of Supervisors of said County, Wayne Allen, as Chief Administrative Officer of said County, Harold W. Kennedy, as County Counsel of said County, Charles C. Mack, G. H. Newland, and T. J. O'Keefe, and each of them as members of the Civil Service Commission of said County, Clifford Amsden, as Secretary and Chief Examiner of said Commission, Michael Donoghue, as Registrar of Voters of said County having demurred to plaintiff's amended complaint, the Court being duly advised in the premises and the Court having sustained the demurrer without leave to amend by an order duly made,

Now, Therefore, by virtue of the law in the premises aforesaid, it is

Ordered, Adjudged and Decreed that the above entitled [fol. 44] action be and the same is hereby dismissed, and that the defendants have and recover from the plaintiff herein their costs and disbursements incurred in this action, in the sum of $3.00.

Dated this 8 day of March, 1948.

Clarence M. Hanson, Judge of the Superior Court.

Endorsed: Filed Mar. 8, 1948. Earl Lippold, County Clerk by J. E. Shaw, Deputy. Entered Mar. 9, 1948, Book 1894, Page 203, by C. F. Escapite, Deputy.

[fol. 45] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 534288

HELEN PARKER, et al., Plaintiffs,

vs.

COUNTY OF LOS ANGELES, et al., Defendants

No. 534177

JULIA LEARNED STEINER, Plaintiff,

vs.

THE COUNTY OF LOS ANGELES, et al., Defendants

MEMORANDUM RULING—March 5, 1948

The primary question presented, viewed in its broadest aspect, is whether the Board of Supervisors may require the officers and employees under its jurisdiction (1) to take an oath of allegiance to the federal and state constitutions, and the laws of California as against all enemies of the United States and the State, and (2) require such officers and employees to answer upon their oath certain questions that touch upon the oath.

The plaintiff in cause No. 534177 is a civil service employee of the County of Los Angeles. She alleges in her amended complaint that she is *not* a member of the Communist Party or of any of the organizations listed on the [fol. 46] questionnaire submitted to her. She avers, however, that the requirement thereby sought to be imposed upon her, i. e., that she take the oath in the form tendered and respond under oath to the questionnaire submitted, violates her constitutional rights as an American citizen.

The fifteen plaintiffs in cause No. 534288 allege in their amended complaint that they are civil service employees of the County of Los Angeles. They likewise aver that the requirement sought to be imposed upon them, i. e., that they take the oath in the form tendered and respond under oath to the questionnaire submitted, violates their constitutional rights as American citizens.

The form of the oath here in question, a part of the questionnaire, reads as follows:

> "A. . . . I, —— ——, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of California, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office or employment on which I am about to enter or am now engaged. So Help Me God."

The other portions of the questionnaire, except for the organizations listed thereon, read as follows:

[fol. 47] "B. Affidavit re Subversive Activity

I do further swear (or affirm) that I do not advocate, nor am I now a member, nor have I been since December 7, 1941, a member of any political party or organization that advocates the over-throw of the Government of the United States, or State of California, or County of Los Angeles, by violence, except those specified as follows: —— —— and that during such time as I am an officer or employee of the County of Los Angeles, I will not advocate nor become a member of any political party or organization that advocates the over-throw of the Government of the United States, or State of California, or County of Los Angeles, by force or violence.

C. Affidavit re Aliases

I do further swear (or affirm) that I have never used or been known by any names other than those listed as follows: —— ——.

D. Membership in Organizations

I do further swear (or affirm) that I have never been a member of, or directly or indirectly supported or followed any of the hereinafter listed organizations, except those which I indicate by an X mark.

. . . . . .

—— ——.

Subscribed and sworn" etc.

[fol. 48] Before proceeding further it should be stated that when the demurrers to the original complaints in these causes came on for hearing before Judge Swain, he not only sustained the demurrers and denied a preliminary injunction but he expressed his views in a written opinion as well. In that opinion he stated the oath was entirely proper and the questionnaire likewise. The amended complaints now submitted to me to which demurrers have been filed allege certain new matters and, moreover, some new and additional authorities are now submitted which were not given to Judge Swain. Accordingly, it seems proper and advisable to submit my own views upon the two cases before me.

Without narrating in detail the allegations of the two amended complaints it will suffice to say that they allege, in almost every conceivable way, that the defendant board and its agents are without power to impose the requirements in question; that the manner, method and application of the power, if power there be, is without legal sanction and violative of the statutory and constitutional rights of the plaintiffs and all employees of the defendant county required to submit to the questionnaire and take the oath in question.

In this State it is well established that the Board of Supervisors under our Constitution, the state laws and the Charter of the County, exercises the powers of the county, except as it is otherwise specifically limited. The Board [fol. 49] is vested with the power to appoint all county officers and employees, not otherwise provided for by the Charter. However, with respect to the classified service, the appointments must be made from the so-called eligible civil service list.

The Civil Service provisions of the Charter authorize the Civil Service Commission to prescribe, amend and enforce rules for the classified service, to make investigations concerning the enforcement and effect of its rules, and the efficiency of the service. Moreover, the commission is empowered to reject candidates who wish to be placed upon civil service rolls where they fail to measure up to the reasonable requirements of the commission and likewise it is authorized to drop persons who have attained the eligible list, for like reasons.

In case the appointing power wishes to discharge a civil service employee the reasons therefor must be given and,

thereupon, if the employee so desires he is entitled to a hearing before the commission. If the commission finds that the reasons are not sufficient, the discharge is void, despite anything the appointing power can do about it.

From what has so far been said, it is self-evident that neither the Board nor its agents can discharge a civil service employee for any cause that the Civil Service Commission finds insufficient. Accordingly, if in the view of the Board [fol. 50] of Supervisors, or its agents as the appointing power, a civil service employee should be discharged on the sole ground that the employee is "subversive", the discharge or attempt to discharge on that ground is of no effect if, on hearing, the Commission holds otherwise.

What then are the powers of the Board and its agents with respect to laying a *good or bad* foundation for a discharge of an employee? Clearly, the appointing power—whether it be private or public—is entitled, subject to a review by the Commission, to discharge for cause or no cause, and, as a corollary, to investigate as it sees fit as a basis for such cause, save and except as it is restricted by law.

Section 41 of the Charter provides that "no person in the classified service . . . shall be appointed or reduced or removed or in any way favored or discriminated against because of his political or religious opinions or affiliations." Aside from this restriction there are no restrictions by the Charter or by law on the appointing power of the board or its agents in appointing or discharging civil service employees, except as noted.

It seems self-evident, then, that aside from any restraining constitutional provision, the Board of Supervisors itself or through its agents duly authorized may investigate to its heart's content the character, the antecedents, the [fol. 51] viewpoints and the affiliations of any of its employees, including those in the civil service, so long as the investigation does not touch upon the political or religious opinions or affiliations of the employee. Moreover, it would seem to follow that so long as the Board does not impinge upon these restrictions, it may, like any private employer, demand of its employee an oath, if it chooses, and a response to a questionnaire as a basis in whole or in part for his discharge. The fact that a person is on the civil service rolls does not insulate him from the lawful actions of the appointing power or enable him to restrict

them, except for the rights specifically granted to him by the provisions of the Charter. Like any private employer the county may question its employees *and demand* unquestioned loyalty, *in the manner it lays it down*, except as restricted by law. To be sure, a private employer, or a public employer, may now and then demand more than is necessary, in the view of individuals concerned or of the courts, but that fact, if it be a fact, is not a ground for the slightest interference on the part of the courts. (United Public Workers v. Mitchell, 1947, 91 L. Ed. 509.)

There remains then to consider whether the action, or the alleged threatened action, of the Board or its agents, violates the rights of the plaintiffs under the federal or the state constitutions. The plaintiffs contend that their [fol. 52] rights in this respect are violated in view of the provisions of the First and Fourteenth Amendments of the federal Constitution and the cognate provisions of our state constitution.

Shortly stated, the plaintiffs contend that the action of the Board and its agents in requiring the employees to take the oath propounded and to give answer to the questionnaire, under oath, violates an employee's rights guaranteed to him under the federal and the state constitutions. These rights, as set forth by the plaintiffs, are as follows:

(1) "Every citizen may freely speak . . . his sentiments on all subjects, being responsible for the abuse of that right. . . ." (California Constitution, Article I, Section 9.)

(2) "The people shall have the right to freely assemble together to consult for the common good, to instruct their Representatives, and to petition the Legislature for redress of grievances." (Calif. Const., Art. I, Sec. 10.)

(3) "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (14th Amendment, U. S. Consti-[fol. 53] tution.)

In viewing the constitutional mantle thrown around an individual it is important to remember that the mantle is a *safeguard*, not *absolute*, but *relative* and *qualified*. Our

federal and state constitutional provisions which guarantee freedom of speech and of opinion, freedom of the press, freedom of assembly, are not licenses to do completely as one chooses, without regard to the other fellow, who possesses exactly the same liberties. When one purports to pursue the liberties granted by the constitution he needs to remember that the other fellow has equal liberties and, what is more, he has the liberty to refuse to listen to another's speech or opinion and the right to refuse to yield to him his own right of assembly. Conceivably, a person may be of the opinion that it is entirely proper to drive through a stop light, or on city streets at 80 miles an hour in violation of an ordinance, but even so, setting up constitutional provisions as a defense will prove ill-advised. So, too, one may believe that the 14th Amendment is a defense to acts that sabotage the Government or are subversive to it, but one will quickly find that the constitutional provision against treason is not cut down or modified, in the least, by the First Amendment or any other provision of the federal or state constitutions.

In what manner, then, do the requirements as laid down [fol. 54] by the Board, or as applied by its agents, impinge on the constitutional rights of the plaintiffs or any other officer or employee subject to the general jurisdiction of the Board? Some of the plaintiffs, but not all of them, do say that they have no objection to an oath that would require them to support the constitution, federal and state, but that the oath in question goes further and, consequently, violates their constitutional rights. The oath, it is true, calls upon the employee not only to support the constitution, state and federal, but to abjure enemies of the Government, both domestic and foreign, but even if that be true, as it is, what is wrong with that in these United States? Moreover, where is the consti-utional provision which directly or indirectly prohibits the Board from demanding that an employee subscribe to the oath? The answer is, there is none, and therefore no more need be said on that subject.

We come next to the questionnaire. It requires that the employee, aside from taking the oath submitted, answer under oath (1) whether or not he advocates the overthrow of the Government and whether or not, since December 1, 1941, he has been a member of any political party or organization that advocates the overthrow of the Government by

force or violence; (2) the name or names which he has used or been known by; (3) whether or not he has been a member of or directly or indirectly supported any of the organi-[fol. 55] zations listed on the questionnaire.

With respect to these particular questions in the questionnaire, the plaintiffs contend they violate their constitutional rights, in that, whether they do or do not personally advocate the overthrow of the Government by force or violence, or belong or do not belong to organizations with such objectives, the provisions of the two constitutions sustain them in their refusal to answer. This is the crux of the argument of the plaintiffs in this aspect of the case. Accordingly, we may now proceed at once to a determination of the issue thus made.

A year ago the Supreme Court of the United States answered these identical contentions in the case of United Public Workers v. Mitchell, 91 L. Ed. 509. Accordingly we may now well turn to that decision for the light it throws on the very similar problem which is posed in the case before us. In that case, instituted by civil service employees, as is the case here, it was contended that the so-called federal Hatch Act, in prohibiting federal classified civil service employees from taking "any active part in political management or in political campaigns", violated their constitutional rights in that it prohibited them from doing the very thing which an ordinary citizen could do with impunity. Accordingly, in that case as here, the plaintiffs sought declaratory relief and an injunction. In holding that the Act [fol. 56] was constitutional, the court pointed out that as early as 1882 the court had held that it was entirely proper for Congress to prohibit party activity by federal employees in the classified service. The court said: "The conviction that an actively partisan governmental personnel threatens good administration has deepened since Ex Parte Curtis (106 U. S. 371 (1882)).

. . . Congress and the President are responsible for an efficient public service. If, in their judgment, efficiency may be best obtained by prohibiting active participation by classified employees in politics as party officers or workers, we see no constitutional objection. . . . To declare that the present supposed evils of political activity are beyond the power of Congress to redress would leave the Nation impotent to deal with what many sincere men believe is a material threat to the democratic system.

". . . The determination of the extent to which political activities of government employees shall be regulated lies primarily with Congress. Courts will interfere only when such regulation passes beyond the general existing conception of governmental power . . .

"When actions of civil servants in the judgment of Congress menace the integrity and the competency of the service, legislation to forestall such danger and adequate to maintain its usefulness is required. The Hatch Act is the answer of Congress to this need. We cannot say with [fol. 57] such a background that those restrictions are unconstitutional."

As far back as in 1891 the Mayor of New Bedford, Massachusetts, discharged a policeman for engaging in political activities contrary to an ordinance or rule of the city. The policeman thereupon sued to regain his job on the theory that the ordinance or rule violated his constitutional rights to express his political opinions. In reply to the contention the late Justice Holmes writing the opinion for the court in McAuliffe v. New Bedford, 155 Mass. 216, said:

> "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional rights of free speech as well as of idleness by the implied terms of his contract. The servant cannot complain, as he takes the employment on the terms which are offered him. On the same principle the city may impose any reasonable condition upon holding offices within its control . . ."

In Chrystal v. Police Commission, 33 Cal. App. 2d 564, it is said:

> "There is nothing startling in the conception that a public servant's right to retain his office or employment should depend on his willingness to forego his con- [fol. 58] stitutional rights and privileges to the extent that the exercise of such rights and privileges may be inconsistent with the performance of the duties of his office or employment."

In view of the decisions just quoted and especially that of the Supreme Court of the United States, it seems clear

that the acts of the defendant Board and its agents, whether they go to the extent claimed by the plaintiffs or not, are within the scope of the power of the Board and are in no sense unconstitutional. Whether the appointing power will or will not discharge employees as claimed by the plaintiffs, for causes of the character enumerated, and whether the Civil Service Commission will uphold such discharges, if any, on such causes, are not matters upon which this Court may speculate or adjudicate at this time. As no cause of action is stated by the complaints in either case, the demurrers thereto are sustained without leave to amend and the restraining orders heretofore issued are discharged.

Dated: March 5, 1948.

Clarence M. Hanson, Judge of the Superior Court.

[fol. 59] [File endorsement omitted.]

[fol. 60] In Superior Court of Los Angeles County

No. 534177

Notice of Entry of Judgment—Filed March 10, 1948

To the plaintiff Julia Learned Steiner, and to her attorneys, Messrs. A. L. Wirin and Fred Okrand:

You, and each of you, will please take notice that Judgment of Dismissal as to all defendants in the above entitled action was duly entered by the Clerk of the Superior Court on the 9th day of March, 1948, in Book 1894, at page 203 of Judgments.

Dated this 9th day of March, 1948.

Harold W. Kennedy, County Counsel, by Gerald G. Kelly, Deputy County Counsel; by Robert L. Trapp, Deputy County Counsel, Attorneys for Defendants.

(Title of Court and Cause)

No. 534177

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Elsa Ruth Randall, being first duly sworn, deposes and says: That she is and was, at all times herein mentioned, a citizen of the United States and a resident of the County [fol. 61] of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that her business address is 1100 Hall of Records, City of Los Angeles, County of Los Angeles, State of California; That on the 10th day of March, 1948, she served the attached Notice of Entry of Judgment upon the attorneys for Plaintiff by depositing a copy thereof, inclosed in a sealed envelope with postage thereon fully prepaid, in the United States postoffice mail box at Los Angeles, California, addressed as follows: Messrs. A. L. Wirin and Fred Okrand, Attorneys, 257 South Spring St., Los Angeles 12, California, and that the person on whom said service was made have their offices at a place where there is a delivery service by mail, and that there is a regular communication by mail between the place of mailing and the place so addressed.

Elsa Ruth Randall.

Subscribed and sworn to before me this 10th day of March, 1948. Earl Lippold, County Clerk, by Marie E. McPherson, Deputy.

[File endorsement omitted.]

[fol. 62] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 534177

JULIA LEARNED STEINER, Plaintiff,

vs.

THE COUNTY OF LOS ANGELES, et al., Defendants

NOTICE OF APPEAL

To the Defendants in the Above Entitled Action, and to Their Attorneys, Harold W. Kennedy, Gerald G. Kelly, and Robert L. Trapp, Esqs.:

Please take notice that the plaintiff in the above entitled action hereby appeals from that Judgment of Dismissal entered on March 9, 1948, and from that Order Sustaining Defendants' Demurrer to Plaintiff's Amended Complaint Without Leave to Amend, dated March 5, 1948.

Dated: March 24, 1948.

A. L. Wirin & Fred Okrand, by Fred Okrand, Attorneys for Plaintiff and Appellant.

[fol. 63] [File endorsement omitted.]

[fol. 64] IN SUPERIOR COURT OF LOS ANGELES COUNTY

STIPULATION RE DESIGNATION OF RECORD ON APPEAL AND NOTICE TO CLERK TO PREPARE RECORD—Filed March 24, 1948

Plaintiff having filed her Notice of Appeal, it is stipulated between the attorneys for the parties in the above entitled action that the documents hereinafter set forth be the Record on Appeal, in accordance with Section 953a, California Code of Civil Procedure, and Rule 5 (b) Rules on Appeal for the Supreme Court and District Courts of Appeal of California, and the Clerk of the above entitled court is requested to make up and prepare the following documents only and certify the same as said Record on

Appeal to the Supreme Court of the State of California, this being an action involving injunction:

1. Amended complaint for injunction and declaratory relief;

2. Demurrer to plaintiff's amended complaint;

3. Amendment to amended complaint for injunction and declaratory relief;

4. Memorandum ruling dated March 5, 1948;

5. Order sustaining demurrer without leave to amend dated March 5, 1948;

6. Judgment entered March 9, 1948;

7. Notice of entry of judgment;

8. Notice of appeal;

[fol. 65] 9. This stipulation and notice.

Dated: March 24, 1948.

A. L. Wirin & Fred Okrand, by Fred Okrand, Attorneys for Plaintiff and Appellant; Harold W. Kennedy, County Counsel; Gerald G. Kelly, Deputy County Counsel; Robert L. Trapp, Deputy County Counsel; by Gerald G. Kelly, Deputy County Counsel, Attorneys for Defendants and Respondents.

[File endorsement omitted.]

[fols. 66-68] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 69-399] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 400] IN THE DISTRICT COURT OF APPEAL, SECOND APPELLATE DISTRICT

Civil 16587

[File endorsement omitted]

JULIA LEARNED STEINER, Plaintiff and Appellant,

vs.

RAYMOND V. DARBY, et al., Defendants and Respondents

Civil No. 16588

HELEN PARKER, et al., Appellants,

vs.

COUNTY OF LOS ANGELES, et al., Respondents

OPINION *—Filed Nov. 12, 1948

Appeal from the Superior Court of Los Angeles County, Clarence M. Hanson, Judge.

A. L. Wirin, Fred Okrand; for Appellant Steiner.

Harold W. Kennedy, County Counsel; Gerald G. Kelly and Robert L. Trapp, Deputies County Counsel, for Respondents Raymond V. Darby, et al.

Gallagher, Margolis, McTernan & Tyre, John T. Mc-[fols. 401-431] Ternan, William B. Murrish; Kenny & Cohn, Robert W. Kenny; Charles J. Katz, for Appellants Parker, et al.

Harold W. Kennedy, County Counsel; Gerald G. Kelly and Robert L. Trapp, Deputies County Counsel, for Respondents County of Los Angeles, et al.

By stipulation of the parties the above entitled cases involving the same point are submitted for decision on a single set of briefs and since the identical point is in-

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(* Clerk's Note. This Opinion is printed in full in the Record in the Companion Case of Parker, et al., vs. County of Los Angeles.)

volved in each case they will be treated as the same case for the purposes of this opinion.

[fols. 432-603] The judgments are and each is affirmed.

McComb, J.

We concur:

Moore, P. J.; Wilson, J.

[fol. 604] IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

[Title omitted]

STIPULATION RE RECORD ON APPEAL AND PRAECIPE—Filed March 23, 1949

The plaintiff and appellant in the above entitled action contemplating filing a petition for Writ of Certiorari in the Supreme Court of the United States,

It is Stipulated between the attorneys for the parties, that the entire record be certified by the Clerk of this Court to the Supreme Court of the United States save and except the following:

1. Stipulation re Retention of Appeal in Supreme Court;
2. Petition for Retention of Appeal in Supreme Court;
3. Application for Permission to File Brief of Amici Curiae in Support of Petition for Hearing, and Brief;

And the Clerk of this Court is requested to prepare and certify said record.

Dated: March 23, 1949.

[fol. 605] A. L. Wirin & Fred Okrand, by Fred Okrand, Attorneys for Plaintiff and Appellant. Harold W. Kennedy, County Counsel; Gerald G. Kelly, Deputy County Counsel; Robert L. Trapp, Deputy County Counsel, by Gerald G. Kelly, Deputy County Counsel, Attorneys for Defendants and Respondents.

[fol. 606] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 607] [Stamp:] Filed Jan. 10, 1949. William I. Sullivan, Clerk, by —— —— L. A. Deputy

Order Due Jan. 11, 1949

In Supreme Court of California

2nd District, Division 2, Civil Nos. 16587, 16588

In the Supreme Court of the State of California
In Bank

Steiner, et al.,

v.

Darby, et al.

Parker, et al.,

v.

County of Los Angeles, et al.

Order Denying Hearing After Judgment by District Court of Appeal

Appellants' petition for hearing Denied.

Carter, J., voting for a hearing.

Gibson, Chief Justice.

Dated Jan. 10, 1949.

I, William I. Sullivan, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 23rd day of March, A. D. 1949.

William I. Sullivan, by W. J. Sinkford, Deputy Clerk.
(Seal.)

[fol. 608] IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1948

No. —

JULIA LEARNED STEINER, Petitioner,

vs.

COUNTY OF LOS ANGELES, et al., Respondents

STIPULATION RE PRINTING OF THE RECORD

In accordance with the provisions of Rule 38 (8) of this Court, it is hereby stipulated between the attorneys for the parties in the above entitled action, that the entire record certified to this Court by the Clerk of the District Court of Appeal, State of California, Second Appellate District, be printed *except* the following:

1. Pages 67 and 68;
2. Page 70 through Page 399;
3. Page 401, beginning with the words "Conceded Facts" through the words "are dismissed" on Page 432;
4. Page 433 through Page 603.

Dated: This 30th day of March, 1949.

[fol. 609] A. L. Wirin & Fred Okrand, by Fred Okrand, Attorneys for Petitioner. Harold W. Kennedy, County Counsel; Gerald G. Kelly, Deputy County Counsel; Robert L. Trapp, Deputy County Counsel, by Gerald G. Kelly, Deputy County Counsel, Attorneys for Respondents.

[fol. 609] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 13, 1949

The petition herein for a writ of certiorari to the District Court of Appeal of the State of California, Second Appellate District, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
APR 9 1949
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1948~~ 49

No. ~~711~~ 49

HELEN PARKER, IONE LANE WHEELER, KATHERINE GATES, CORNELIUS WEBSTER, WILLIAM G. COLE, J. L. MARTIN, ROBERT L. McGUIRE, JULLEANA GLISBY, ALICE M. PARSONS, CAROLINE POTTENGER, JOHN R. McCROSKEY, MATTIE A. BELINO, ADA GRUVER, MAJOR WEST, ALICE WALSH, C. H. DEMAREST, BETTY S. SELDEN, MIRIAM LASAROU, RALPH L. DAVIS, WINIFRED McCONNELL, COLUMBUS S. BELL, SHIRLEY GALAT, RUTH THOMASEN, KENT HAMMOND THIES, LAWRENCE LUCKS,

Petitioners,

vs.

COUNTY OF LOS ANGELES; WILLIAM A. SMITH, LEONARD J. ROACH, JOHN ANSON FORD, RAYMOND V. DARBY AND ROGER W. JESSUP, AND EACH OF THEM AS MEMBERS OF THE BOARD OF SUPERVISORS OF SAID COUNTY; WAYNE ALLEN, AS CHIEF ADMINISTRATIVE OFFICER OF SAID COUNTY; HAROLD W. KENNEDY, AS COUNTY COUNSEL OF SAID COUNTY; CHARLES C. MACK, G. H. NEWLAND AND T. J. O'KEEFE, AND EACH OF THEM, AS MEMBERS OF THE CIVIL SERVICE COMMISSION OF SAID COUNTY; CLIFFORD AMSDEN, AS SECRETARY AND CHIEF EXAMINER OF SAID COMMISSION; MICHAEL DONOGHUE, AS REGISTRAR OF VOTERS OF SAID COUNTY.

No. ~~712~~ 50

JULIA LEARNED STEINER,

Petitioner,

vs.

COUNTY OF LOS ANGELES; WILLIAM A. SMITH, LEONARD J. ROACH, JOHN ANSON FORD, RAYMOND V. DARBY AND ROGER W. JESSUP, AND EACH OF THEM AS MEMBERS OF THE BOARD OF SUPERVISORS OF SAID COUNTY; WAYNE ALLEN, AS CHIEF ADMINISTRATIVE OFFICER OF SAID COUNTY; HAROLD W. KENNEDY, AS COUNTY COUNSEL OF SAID COUNTY; CHARLES C. MACK, G. H. NEWLAND AND T. J. O'KEEFE, AND EACH OF THEM, AS MEMBERS OF THE CIVIL SERVICE COMMISSION OF SAID COUNTY; CLIFFORD AMSDEN, AS SECRETARY AND CHIEF EXAMINER OF SAID COMMISSION; MICHAEL DONOGHUE, AS REGISTRAR OF VOTERS OF SAID COUNTY.

PETITION FOR WRITS OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT.

LEE PRESSMAN,
9 East 40th Street,
New York 16, New York,
Counsel for Petitioners Parker, et al.

A. L. WIRIN,
FRED OKRAND,
257 South Spring Street,
Los Angeles 12, California,
Counsel for Petitioner Steiner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 711

HELEN PARKER, IONE LANE WHEELER, KATHERINE GATES, CORNELIUS WEBSTER, WILLIAM G. COLE, J. L. MARTIN, ROBERT L. McGUIRE, JULLEANA GLISBY, ALICE M. PARSONS, CAROLINE POTTENGER, JOHN R. McCROSKEY, MATTIE A. BELINO, ADA GRUVER, MAJOR WEST, ALICE WALSH, C. H. DEMAREST, BETTY S. SELDEN, MIRIAM LASAROU, RALPH L. DAVIS, WINIFRED McCONNELL, COLUMBUS S. BELL, SHIRLEY GALAT, RUTH THOMASEN, KENT HAMMOND THIES, LAWRENCE LUCKS,

Petitioners,

vs.

COUNTY OF LOS ANGELES; WILLIAM A. SMITH, LEONARD J. ROACH, JOHN ANSON FORD, RAYMOND V. DARBY AND ROGER W. JESSUP, AND EACH OF THEM AS MEMBERS OF THE BOARD OF SUPERVISORS OF SAID COUNTY; WAYNE ALLEN, AS CHIEF ADMINISTRATIVE OFFICER OF SAID COUNTY; HAROLD W. KENNEDY, AS COUNTY COUNSEL OF SAID COUNTY; CHARLES C. MACK, G. H. NEWLAND AND T. J. O'KEEFE, AND EACH OF THEM, AS MEMBERS OF THE CIVIL SERVICE COMMISSION OF SAID COUNTY; CLIFFORD AMSDEN, AS SECRETARY AND CHIEF EXAMINER OF SAID COMMISSION; MICHAEL DONOGHUE, AS REGISTRAR OF VOTERS OF SAID COUNTY.

No. 712

JULIA LEARNED STEINER,

Petitioner,

vs.

COUNTY OF LOS ANGELES; WILLIAM A. SMITH, LEONARD J. ROACH, JOHN ANSON FORD, RAYMOND V. DARBY AND ROGER W. JESSUP, AND EACH OF THEM AS MEMBERS OF THE BOARD OF SUPERVISORS OF SAID COUNTY; WAYNE ALLEN, AS CHIEF ADMINISTRATIVE OFFICER OF SAID COUNTY; HAROLD W. KENNEDY, AS COUNTY COUNSEL OF SAID COUNTY; CHARLES C. MACK, G. H. NEWLAND AND T. J. O'KEEFE, AND EACH OF THEM, AS MEMBERS OF THE CIVIL SERVICE COMMISSION OF SAID COUNTY; CLIFFORD AMSDEN, AS SECRETARY AND CHIEF EXAMINER OF SAID COMMISSION; MICHAEL DONOGHUE, AS REGISTRAR OF VOTERS OF SAID COUNTY.

PETITION FOR WRITS OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT.

Petitioners pray that Writs of Certiorari issue to review the decisions and judgments of the California District Court of Appeal, Second Appellate District, entered on

November 12, 1948 (P. 47)[1] affirming the judgments of the Superior Court of the State of California in and for the County of Los Angeles, entered March 9, 1948 (P. 34; S. 34) which sustained respondents' demurrers to petitioners' amended complaints without leave to amend (P. 34; S. 34). The Supreme Court of California denied a hearing (P. 76; S. 49).

Opinions Below

The opinion of the Superior Court (P. 35) is not reported. The opinion of the District Court of Appeal (P. 47) is reported in 88 Advance California Appellate Reports 487. The Supreme Court of California rendered no opinion in entering its order denying a hearing (P. 76; S. 607).

Jurisdiction

The judgments of the District Court of Appeal were entered November 12, 1948 (P. 47, 63; S. 47, 48). The order of the Supreme Court of California denying a hearing was entered January 10, 1949 (P. 76; S. 49).

The constitutional issues here presented were urged in the trial court (P. 8-16; S. 7-13, 32), considered by it (P. 39) where they were overruled (P. 39-43, 34); they were urged before and considered by the District Court of Appeal (P. 49, 60-61) where they were also overruled (P. 56, 57-63; S. 48); and they were urged before the Supreme Court of California (P. 69-74) which Court declined to grant a hearing thereon, one Justice voting in favor of granting such a hearing (P. 76; S. 49).[2]

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[1] References to the Parker record will be thus: (P. 1) and to the Steiner record thus: (S. 1). The documents common to both cases have, in accordance with Rule 38 (8) of this Cou ., not been reprinted twice but are printed in Parker only. As is seen from these documents, they were joint documents in both cases, e.g.: consolidated opinion of trial court (P. 35); opinion of court below (P. 47).

[2] Under California law a hearing in the State Supreme Court after a decision in the District Court of Appeal is discretionary with the State

The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3) and 2101 (c).

State Action Involved

The issues presented in these cases arise out of a compulsory oath and affidavit required of all county employees, as a condition of continued employment, by the Los Angeles County Board of Supervisors as part of a program of investigation adopted and ordered by said board. The program adopted and ordered appears in the Record at P. 16-25 and S. 15-23. The compulsory Oath and Affidavit is, for the convenience of the Court, set forth in the Appendix, *infra*.

Statement

Facts—There are no disputed issues of fact, the trial court having sustained respondents' demurrers (P. 25; S. 23) to petitioners' amended complaints (P. 1; S. 1, 32) without leave to amend (P. 34; S. 34). Accordingly, the facts before this Court are found in the amended complaints and in the document attached thereto as Exhibit "A" (P. 16; S. 15) which is incorporated in and made a part of the complaints (P. 5; S. 3). The facts, as framed by the complaints and demurrers, are as follows:

Petitioners are citizens of the United States (P. 2-3; S. 1) and permanent civil service employees of the respondent Los Angeles County (P. 2-3; S. 1). Said County employs approximately 20,000 like persons (P. 3; S. 2).

Supreme Court. (Calif. Const. Art. VI, Sees. 4 and 4 c; Rules 28 and 29, Rules on Appeal for the Supreme Court and District Courts of Appeal of the State of California.) Petitioners applied for hearing in this case and were denied. (P. 76; S. 49). This Court's writ is properly directed, therefore, to the District Court of Appeal. (*Randall* v. *Board of Commissioners*, 252 U. S. 22; *American Railway Express Co.* v. *Levee*, 263 U. S. 19; *Western Union Telegraph Co.* v. *Priester*, 276 U. S. 252; *Chesapeake and Ohio R. Co.* v. *Mihas*, 280 U. S. 102).

Respondent Los Angeles County is a political subdivision of the State of California (P. 3; S. 2) and the individual respondents are certain elected or appointed officers of the County (P. 3-4; S. 2) including the elected members of the County Board of Supervisors (P. 3; S. 2).

On April 1, 1947 the respondent members of the County Board of Supervisors directed the respondent County Chief Administrative Officer and the County Counsel to study, prepare and recommend ways and means to inquire into the political beliefs and associations of all county employees in order to determine whether there were in the employ of the county "any members of the Communist Party of the United States, avowed or otherwise" or any "communistic" or "subversive" persons (P. 4-5; S. 3).

On August 15, 1947 these two respondents presented in writing to the Board of Supervisors a program of investigation which they recommended (P. 5, 16; S. 3, 15).

On August 26, 1947 the Board of Supervisors accepted the recommended program of investigation, adopted it without change and ordered it put into operation (P. 5; S. 4).

Under the program as adopted the respondent County Board of Supervisors ordered and required a committee composed of the respondents County Chief Administrative Officer, County Sheriff, Secretary of the County Civil Service Commission and the County Counsel to institute and administer the program for the purpose of ascertaining whether any county employees were "subversively inclined persons" (P. 18; S. 16).

In pursuit of that purpose and objective the committee was directed and ordered to employ a number of means and methods of investigation including the institution of a compulsory Oath and Affidavit to be required of all county employees (P. 17; S. 15).

Under Paragraph "D" of the compulsory Oath and Affidavit county employees are required to disclose whether

they have ever "been a member of, or directly or indirectly supported or followed" (P. 20; S. 18) any of 144 named lawful organizations or 2 named lawful publications. The scope of the disclosure thus required is revealed by an examination of the listed organizations and publications which include among others the following (P. 20-25); S. 18-23 and Appendix, *infra*):

Named Publications; e. g.:
- Daily Worker
- New Masses

Named Veterans' Organizations; e. g.:
- American Veterans Committee

Named Religious Organizations; e. g.:
- Humanist Society of Friends

Named Labor Unions; e. g.:
- American Communications Association
- Federation of Architects, Engineers, Chemists and Technicians
- United Federal Workers
- Workers Alliance
- Marine Cooks and Stewards

Named Political Organizations; e. g.:
- American Communist Party
- Farmer Labor Party
- Hollywood Independent Citizens Committee or Arts, Sciences and Professions
- National Citizens Political Action Committee

Named Organizations Dealing with Foreign Affairs; e. g.:
- American Committee for a Free Indonesia
- Committee for Boycott Against Japanese Aggression
- League Against War and Fascism
- American Russian Institute
- Anti-Nazi League
- Joint Anti-Fascist Refugee Committee

Named Organizations Dealing with Civil Rights and Discrimination; e. g.:

American Committee for the Protection of the Foreign Born
Bay Area Council Against Discrimination
Civil Rights Congress
International Labor Defense
National Negro Council
National Federation for Constitutional Liberties

Named Organizations Dealing with Civic Affairs; e. g.:

Hold the Price Line Committee
League of Women Shoppers
Citizens Committee for Better Education

Named Schools; e. g.:

California Labor School
Communist Workers School

Under Paragraph "B" of the compulsory Oath and Affidavit county employees are required to disclose whether they have since December 7, 1941 ever advocated or been a member of any political party or organization that advocates the overthrow of the Governments of the United States or of the State of California or of the County of Los Angeles, by force or violence and to pledge under oath that while in the employ of the county they will not so advocate or join any political party or organization which so advocates (P. 19; S. 17-18).

Any county employee, including petitioners, who fails or refuses to execute the Oath and Affidavit is to be discharged from county employ (P. 5; S. 4).

The committee is ordered and directed, if it decides, on the basis of any answer to the Oath and Affidavit or as a result of any of the other parts of its ordered investigation, that any employee is "subversively inclined", to publicly

report such individual to the respondent County Board of Supervisors together with a recommendation as to appropriate action to be taken (P. 18-19; S. 17).

Petitioners in their amended complaints sought injunctions prohibiting the respondent County and the several respondent officers thereof from requiring petitioners, on pain of discharge, to execute the Oath and Affidavit or from otherwise enforcing or applying the County's program of investigation into thought, speech and association against petitioners and for declaratory relief (P. 14-16; S. 13-14). As above stated, the trial court sustained demurrers to the amended complaints without leave to amend (P. 34; S. 34) and the court below affirmed (P. 47).

Decisions Below—The Superior Court considered and rejected petitioners' claims that paragraphs "D" and "B" of the Oath and Affidavit violated their rights under "the provisions of the First and Fourteenth Amendments of the Federal Constitution" (P. 39, 43). That court relied on *United Public Workers* v. *Mitchell*, 330 U. S. 75, declaring that that decision had "answered these identical contentions" and had held adversely to them (P. 41).

The court below similarly considered and rejected petitioners' claims saying "there is nothing in the Oath or Affidavit which requires plaintiffs to surrender any constitutional right." (P. 56.) That court opined that petitioners were both disloyal and insane in contending that the Oath and Affidavit violated the Constitution. It said: "The mere asking of the question (as to whether petitioners could be compelled to make the disclosures required by the Oath and Affidavit) points unerringly to the answer any *loyal, sane* citizen of the United States of America would give to it. It is an unequivocal 'yes' ". (P. 49.) The court supported its decision by stating that whenever a person accepts government employment "he impliedly surrenders

certain natural rights which would remain his if he were a private citizen only just the same as he would surrender certain privileges if he were to enter private employment" (P. 51-52). And further that, since the Government of the United States had the right to draft persons for military service which may result in his loss of life, "any state in attempting to perpetuate its loyalty to the union has the unquestioned right and duty to exact from its citizens adherence to *all* lesser measures which have for their purpose the preservation of our form of government and the repression of its enemies." (P. 51.) (Italics added.) The court concluded its opinion by adopting the opinion of the Superior Court. (P. 57.)

Questions presented

(1) Whether, on its face or as applied in this case, Paragraph "D" of the Oath and Affidavit which compels all county employees to disclose their membership in or direct or indirect support or following of any of 144 named lawful organizations and 2 named lawful publications deprives petitioners of the liberties of freedom of speech, press, religion, thought, association, assembly or the right to privacy of conscience, without due process of law in violation of the First and Fourteenth Amendments to the Constitution.

(2) Whether, on its face or as applied in this case, Paragraph "B" of the Oath and Affidavit similarly deprives petitioners of those liberties and rights without due process of law in violation of those amendments.

Reasons for Granting the Writs

The court below, in sustaining the power of the County in the instant cases to impose on all County employees the compulsory Oath and Affidavit over the claims of those employees that they are thereby deprived of fundamental

Constitutional rights, has decided Federal questions of the greatest import which this Court has never determined, and has decided those questions in a manner inconsistent with the principles contained in the decisions of this Court which bear most closely thereon. The concept that one, even a public employee, must account to his superior and declare under oath as to the newspapers and magazines he may choose to read, as to the causes he may embrace and the lawful associations he may have entered in furtherance thereof, or as to the manner in which he may choose to worship his God, is a concept utterly foreign to this country.

The questions concerned are of greatest consequence and import. They affect not merely the rights of 20,000 residents of the County of Los Angeles, but the rights of 1/10th of the nation's employed population, the percentage which today is employed in one or another capacity by Governmental agencies, either local, state or federal.[3] Similar Oaths and Affidavits intruding upon the claimed rights of Government employees to privacy of conscience and freedom of speech are either presently in force or immediately in prospect under proposed legislation in all sections of our land. (*Our Uncertain Liberties*, U. S. Liberties, 1947-1948, American Civil Liberties Union Annual Report, N. Y. P. 23.)

The well-being of the nation imperatively calls for the guidance which this Court, alone, may give as to the correct and constitutional limits of Governmental power in this area. It is petitioners' respectful contention that in the instant case those limits have been gravely exceeded.

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[3] See the monthly figures for 1948 in "Survey of Current Business," Department of Commerce, Bureau of Census. In April 1948, 5,900,000 persons were employed by either federal, state or local governments out of a total of 58,330,000 employed throughout the nation. In July the figures were 5,596,000 and 60,312,000.

In petitioners' view, Paragraph "D" of the Oath and Affidavit, on its face and as applied in this case, offends the First and Fourteenth Amendments in that by its very terms it operates directly and specifically on exercises of freedom of speech, press, religion, thought, association and assembly. Moreover, it requires disclosures shocking in breadth contrary to the right of privacy of conscience to which petitioners are entitled. Furthermore, the force of Paragraph "D" as applied makes it no mere nominal burden on the liberties concerned improper in principle alone, but rather one which directly tends to coerce and intimidate petitioners in their free exercise of those liberties.

In these premises, petitioners submit that the invasions of liberties so occasioned may not be excused or justified on the basis of the Government employment status of petitioners. Though petitioners earn their livelihood by working for the County, they remain citizens as well as employees, and though the County, here, may be called an employer, it remains, nonetheless, a Government as well, limited as are all Governments, by the mandatory provisions of the Federal Constitution. To permit the sweeping abridgement of petitioners' rights worked by Paragraph "D" in the name of insuring American Constitutional Government against real or supposed international insecurity would be to permit a most tragic error. It would be to sever the arteries which give life to such Government in the name of preserving that Government's well-being. Without freedom of speech, free Government ceases to exist. "When that door is closed, it closes all doors behind it."

Petitioners also and separately respectfully submit that Paragraph "B" of the Oath and Affidavit violates the First and Fourteenth Amendments in similar manner and for similar reasons.

I. The requirement under Paragraph "D" of the Oath and Affidavit that petitioners disclose to the State membership in or direct or indirect support or following of 144 named lawful organizations and 2 named lawful publications violates petitioners' rights to freedom of speech, press, religion, thought, association and assembly contrary to the First and Fourteenth Amendments.

A. *The Requirement of the Oath and Affidavit Misapprehends the Scope, Significance and Role of the First Amendment Liberties and Unconstitutionally Impedes the People in Their Discharge of Governmental Functions Allocated to Them by the Constitution.*

Under Paragraph "D" of the Oath and Affidavit in the instant case, the State of California, through its agency the County of Los Angeles, asserts power to demand of petitioners and the 20,000 other persons in its employ a compulsory accounting under oath as to the manner in which they have exercised the fundamental and elemental liberties of self-governing people, freedom of speech and its correlatives. It commands them to disclose on pain of forfeiture of their means of livelihood membership in or support or following of any of 144 named lawful organizations and 2 named lawful publications.

In holding this command valid, the court below has departed from decisions of this Court which are controlling in principle and has fundamentally misconceived the scope, significance and rule of the rights of freedom of speech, press, thought, association and assembly secured by the First Amendment [4] and the relation which the people of the United States while exercising those rights bear toward all governmental bodies or officers, State or Federal.

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[4] Which the Fourteenth Amendment makes applicable to the States, *Cantwell* v. *Connecticut*, 310 U. S. 296, 303.

The core of our form of government is that it is self-government of and by the people themselves. It was the people of the United States who established the Nation's Constitution in the original and through it they determined with supreme authority the distribution of all governmental powers which might thereafter be exercised anywhere in the land. Certain powers they allocated to the several states, certain other powers they allocated to the Federal government, and finally, certain powers, including the greatest powers of all, the powers of ultimate sovereignty, they affirmatively reserved to themselves. Under the Constitution the people themselves are constituted the "ultimate tribunal" of the nation, charged with finally selecting truth from falsity and wisdom from error in every field of thought and activity and with resolving ultimate choices of policy in all areas of our nation's life. To them, acting by and through the processes of popular government, is entrusted ultimate responsibility to shape the whole destiny of the country. *Yick Wo* v. *Hopkins*, 118 U. S. 356, 370; *Thornhill* v. *Alabama*, 310 U. S. 88, 97-103; *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 641; *Thomas* v. *Collins*, 323 U. S. 516, 543; *Newport Bridge Co.* v. *U. S.*, 105 U. S. 470, 482.

The fundamental significance of the liberties of freedom of speech, press, thought, association and assembly lies in the fact that it is only by and through the exercise of these liberties together with the liberty of suffrage that the people may discharge the great governmental functions which fall upon their shoulders. These liberties are no mere private rights secured to serve individual happiness but duties, powers and functions of government, the instruments and means whereby the people equip themselves to discharge their far-reaching responsibilities of state with maximum wisdom and judgment. *Thornhill* v. *Alabama*, 310 U. S. 88, 95-103;

De Jonge v. *Oregon*, 299 U. S. 353, 364-5; *Pennekamp* v. *Florida*, 328 U. S. 331, 350.

In consequence, in the exercise of these liberties within the area of matters of national concern the people act as instruments and agencies of the Federal government. They assert and act under national authority. Under the principle of the Division of Powers the States have no jurisdiction to so act as to impede, obstruct or intrude into the jurisdiction of any agency possessed of Federal authority. U. S. Const. Art. VI, Sec. 2; *Tarble's* Case, 13 Wall. (U. S.) 397; *McCulloch* v. *Maryland*, 4 Wheat. 316; *Davis* v. *Elmira Savings Bank*, 161 U. S. 275; *Tennessee* v. *Davis*, 100 U. S. 257; *La Crosse Telephone Corp.* v. *Wisconsin Employment Relations Board*, 93 L. Ed. (Adv. Op.) 265. No one would pretend, for example, that a State had power or jurisdiction to call upon any Federal judge to account as to the manner in which he was proceeding in any case at trial in a Federal court. No more may any State call upon the people, acting as the people of the United States, to account as to the manner in which they are proceeding through the exercise of their liberties of speech and thought to determine the highest Federal issues of all, those affecting the Nation's destiny and guiding policies.

Moreover, the division of powers between the States and the Federal government does not exhaust the immunity of the people in thought and speech. The Constitution not only allocates power as between the State and Federal governments but it also allocates power in certain respects as between the people and all governments whatever, State or Federal. The Constitution affirmatively reserves to and allocates to the people the power and authority of ultimate control over State governments as well as over the Federal government and it secures to them the liberties of speech and thought in matters of public concern to the end

that they may maintain and realize that ultimate control.[5] This is "the modicum of freedom of thought, speech and assembly which all citizens of the Republic may exercise throughout its length and breadth, which no State, nor all together, nor the Nation itself, can prohibit, restrain or impede." (*Thomas* v. *Collins*, 323 U. S. 516, 543). This modicum lies at the very core of our democratic system. It is within its area that respondents intrude in the instant case. This they have no right to do.

So long, therefore, as no more is involved than exercises of the great sovereign liberties secured by the First Amendment, the manner in which the people may choose to exercise those liberties is a matter lying entirely outside the lawful interest of and beyond the jurisdictional power of all agencies whatever save and except the people themselves.

B. *The Oath and Affidavit is Unconstitutional per se Because Laid Specifically and Directly on Exercises of First Amendment Liberties as such.*

In utter disregard of the above-discussed fundamental constitutional principles, the State here would require petitioners and 20,000 other members of the people to account under oath to it simply and solely for exercises of various First Amendment liberties. It would require first and foremost that they account to it as to their membership in or support of 144 associations and organizations devoted to causes of public moment. But membership in or support of such associations is but an exercise of the liberties of freedom of assembly and association.[6] Again, by including

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[5] This it does by the First, Ninth, Tenth and Fourteenth Amendments and by Article IV, Sec. 4 and by its provisions in whole.

[6] It is likewise an exercise of freedom of speech for in the circumstances of our time the primary media for communication of ideas are economically and technologically beyond the reach of individuals save

on its list a named religious organization, the Humanist Society of Friends, (P. 23; S. 21), the State would compel petitioners to disclose under oath their adherence or non-adherence to a particular religious creed. Yet the right to embrace or reject any religious creed is clearly an exercise of freedom of religion. *United States* v. *Ballard*, 322 U. S. 78, 86-87. The State here would also require accounting to it for "support" or "following" of a named newspaper and a named magazine, The Daily Worker (P. 22; S. 20), and The New Masses (P. 24; S. 22). But "supporting" newspapers and magazines to the end that the same may be published and circulated and "following" of such publications by reading or subscribing thereto patently are exercises of freedom of press. *Martin* v. *Struthers*, 319 U. S. 141, 143.

In *Murdock* v. *Pennsylvania*, 319 U. S. 105, this Court held that the State governments may not levy any license or revenue taxes directly on freedom of speech or of the press however nominal the amount; because the people derive authority to exercise those liberties directly from the First Amendment, a State tax there is impermissible *per se*. The principle underlying this decision is applicable to all assertions of State power whatever. No State may by any assertion of power whatever reach specifically and directly to or assert jurisdiction *eo nomine* over any of the liberties secured by the First Amendment as California here has attempted to do. It is the character of the right not of the limitation which governs and controls. *Thomas* v. *Collins*, 323 U. S. 516, 530. Additionally, the character of the limitation here, viewed even in its least burdensome

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those in the highest circles of wealth and it is only by and through the collective resources of associations that many among our people may effectively voice their wants or ideas at all. Cf. *Martin* v. *Struthers*, 319 U. S. 141, 146. Freedom of speech means effective, not nominal, freedom and it extends to men of humble means no less than to those with wealth and estate. *Murdock* v. *Pennsylvania*, 319 U. S. 105, 111.

light, is one which has been expressly condemned by this Court. In the *Thomas* case this Court ruled that compulsory identification whereby the speaker is required to disclose to and register with the State the name of the cause he supports or the organization with which he is affiliated is a limitation invalid *per se* even though no area of discretion be reserved to State officers to approve or disapprove the speech of the individual or organization concerned and even though the registration be a purely ministerial act undertaken for information purposes only. Though such restraint be thought nominal in burden, the limitation is invalid as "a matter of principle." (323 U. S. 516, 539). So here.

C. *The Oath and Affidavit is Unconstitutional Because Part of a State Program which is Void on its Face as a System for the Registration and Judgment of Thought, Speech and Association Under Wholly Arbitrary and Ill-Confined Standards.*

The compulsory disclosure required here by the State is, moreover, one which is calculated to place on the liberties secured by the First Amendment no mere nominal burden improper in principle alone but rather the heaviest and most intolerable burden of all known to history, the deadening restraint of arbitrary censorship over the content of thought and speech. Paragraph "D" of the Oath and Affidavit is not asked by the State for any statistical or other equally casual and innocent purpose. It is imposed for the purpose of requiring registration with the State of the thoughts and associations of County employees to the end that such thoughts and associations may be measured, evaluated and judged under standards of permissibility so loosely cast and ill-confined as to permit wholly arbitrary judgment and evaluation in their name. This is the key

mark of censorship. Whether the censor operates through a penal statute so loosely drawn and ill-confined as to permit discretionary and discriminatory enforcement (*Thornhill* v. *Alabama*, 310 U. S. 88), through a statute permitting the enjoining of publications under standards similarly defective (*Near* v. *Minn.*, 283 U. S. 697), or through the classic medium of a licensing system permitting the withholding of licenses under like defective standards (*Schneider* v. *Irvington*, 308 U. S. 147; *Lovell* v. *Griffin*, 303 U. S. 444), the distinguishing feature and vice which marks the censor wherever he may appear and however he may operate is his power to judge the content of thought and speech under standards so ill-confined as to permit him to approve or disapprove thereof according to his prejudices.

Precisely such power is asserted here. As alleged in the complaint and admitted by the demurrer the County Board of Supervisors devised the entire program of State investigation here, including Paragraph "D" of the Oath and Affidavit, as a means to the declared objective of uncovering "communistic" and "subversive" persons in County employment (P. 4-5; S.). To this end it has specifically directed the committee charged with administering the Oath and Affidavit to uncover and report employees whose thought and speech mark them as "subversively inclined" persons (P. 18; S. 17). These standards of evaluation—"subversively inclined" persons and persons who are "communistic" or "subversive"—are standards possessed of no ascertainable meaning. They place no limits on their interpretation by those who may administer them save the arbitrary discretion of such administrators themselves. Who can say what thought or speech meets or fails to meet such ill-confined standards or what questions aimed at creed, association or conscience are appropriate and legitimate to uncovering violations thereof? If in the name

of uncovering possible violations of such standards the State may today ask the questions in Paragraph "D" of the present Oath and Affidavit, tomorrow it may equally well ask such ominous questions as "Are you a Catholic?" or "Are you a Jew?". Indeed, it already asks, "Are you a member of the Humanist Society of Friends?" (P. 23; S. 21). And apart from religion, under the Oath and Affidavit the employee is held accountable for thought, speech and association covering an intellectual area shocking in breadth. If any chance answer by him thereunder reveals unorthodoxy under any of the standards above mentioned he faces public stigmatization by the State as a "subversive and disloyal" citizen (P. 5-6; S. 4) and discharge from County employ (P. 5-6; S. 4). To be safe he must keep his mind blank on virtually all controversial issues of the day. Mindful of the broad scope of political and civic affairs covered by the organizations and publications listed in the Oath and Affidavit, he must avoid thought not only on the great international questions of our day presented by the issue of private property versus socialization of the means of production, but on a vast gamut of more transitory questions as well such as the defense of labor leaders like Tom Mooney, support for the Spanish Loyalists, the struggle for Indonesian independence, price and rent control, the poll tax, the programs of small political parties such as the Farmer Labor Party, and many, many other matters of civic moment.

It is no answer to say, as did the court below, that an employee may not be discharged even though his answers to Paragraph "D" of the Oath and Affidavit indicate affiliation with or support of one or more of the listed organizations, or that if he is discharged he may ultimately win reinstatement by administrative or judicial review (P. 63). It is not the certainty of disapproval and penalty that renders void all systems of arbitrary discretionary

censorship in the area of freedom of speech but rather the mere potentiality for such disapproval and penalty. Proof of an abuse of power in the particular case has never been deemed a requisite for an attack on the constitutionality of systems of censorship over the content of speech and thought. The power of the censor is pernicious not merely by reason of particular acts of censure but by reason of the very threat to censure at all. It is not the sporadic abuse of power by the censor which is prohibited by the Constitution but the pervasive threat inherent in the very existence of any censorial system. *Thornhill* v. *Alabama*, 310 U. S. 88, 97. Because of this even one who might through the favor of the licensor obtain a license for the asking, may attack the constitutionality of any system for the licensing of speech without even applying for a license. *Lovell* v. *Griffin*, 303 U. S. 444; *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496. He need not submit his application for approval or disapproval at all. So here petitioners need not submit their thoughts and associations to the State for approval or disapproval but may challenge the action of the State in its entirety as being void on its face.

D. *The Oath and Affidavit Is Unconstitutional Because Premised Upon Guilt by Association*

A final defect inheres in Paragraph "D" of the Oath and Affidavit here in the total absence of any rational relation between the questions asked and any constitutionally permissible object of inquiry, if the existence of any right to inquire at all be assumed for purposes of argument. For if the object of inquiry be confined to any permissible constitutional limits, then the questions asked concerning membership in or support of the listed organizations and publications can bear no reasonable relation to the end sought. The County Board of Supervisors

itself in the Committee Report which it adopted (P. 4-5; S. 4) freely concedes that the listed organizations and publications are possessed of "publicly alleged purposes which have every appearance of being patriotic and worthy" (P. 17-18; S. 16). Membership in or direct or indirect support or following of such organizations and publications will support no inference save one of good citizenship. Even were it assumed for purposes of argument that in such organizations there might be some members secretly harboring one or more impermissible objectives in addition to or at war with the public legitimate programs thereof, still no inference that he shares such impermissible objects could be imputed to any member or supporter of the organization on the basis of his membership or support alone without imputing guilt from the merest act of association. This, freedom of speech prohibits. Under our tradition beliefs are personal and not a matter of mere association. *Schneiderman* v. *United States*, 320 U. S. 118. The question, if the rights of freedom of speech, association and assembly are to be preserved, must be directed not to the auspices under which a meeting was held but to the public speeches delivered thereat, not to the secretly harbored objectives of other members within an organization but to the public purpose and program espoused by the organization itself. *DeJonge* v. *Oregon*, 299 U. S. 353, 365. Cf. *Bridges* v. *Wixon*, 326 U. S. 135 143, *et seq.*

II. The requirement under Paragraph "D" of the Oath and Affidavit that petitioners disclose to the State membership in or direct or indirect support or following of any of 144 named lawful organizations and 2 named lawful publications listed by the State violates petitioners' personal rights to maintain silence concerning their private beliefs and associations, and to be free from compulsory disclosure of matters of private conscience, in contravention of the First and Fourteenth Amendments.

The liberties secured by the First and Fourteenth Amendments, in addition to their societal significance discussed above, possess a separate significance in terms of their essential value and import to the individual. Viewed in terms of this import they raise additional constitutional barriers to the compulsory disclosures required by Paragraph "D" of the Oath and Affidavit.

Without some minimal guarantees of private security and dignity, without some final area of absolutely privileged and protected individuality, men may find no worth, happiness or satisfaction in life no matter with what else government may provide them.

Part of this we express when we say a man's home is his castle. The Constitution through the Fourth Amendment bars the state from entering that castle save where a warrant has issued on probable cause.

But if a man's home is his castle his mind is the innermost sanctuary thereof, the last and ultimate of all refuges of the individual. If a man's very thoughts be not privileged, then where seek the sanctity and dignity of the individual at all?

Paragraph "D" of the Oath and Affidavit requires disclosures affecting not acts or conduct but thoughts, beliefs and associations. The State of California asks not what the citizen has done but what he has read, what beliefs

he has "followed" or "supported," with what causes he has been affiliated. All of these reach to and invade privacy of thought, mind and conscience. Under the Constitution and under controlling decisions of this Court that are is absolutely privileged against such invasion.

In *Cantwell* v. *Connecticut*, 310 U. S. 296, 303, this Court declared that freedom of religion under the First Amendment "embraces two concepts,—freedom to believe and freedom to act." The first, this Court averred, is "absolute" and in consequence, government may not in any way restrict the individual's "freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose." The second concept embraced by freedom of religion, freedom to act, is not and by nature cannot be absolute. Conduct must be subject to reasonable regulation if society is to endure. But thought, acceptance of creed and adherence to the religious organization of one's choice—these under freedom of religion are absolutely privileged.

That the instant case involves a violation of the absolute privilege attending thoughts, beliefs and adherences to creeds, causes and organizations of one's choice in the area of secular rather than religious affairs is without consequence.[7] The First Amendment gives freedom of mind the same security as freedom of conscience. *Thomas* v. *Collins*, 323 U. S. 516, 531; *Prince* v. *Massachusetts*, 321 U. S. 158, 164. Whether the subject be politics, nationalism or religion, it is the purpose of the First Amendment to reserve the sphere of intellect and spirit from all official invasion or control, and no official, high or petty, may under our Constitution force citizens by word or act to confess faith in mere matters of opinion. *West Virginia State Board of*

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[7] Indeed adherence to the religious organization of one's choice is itself directly infringed in this case in the question concerning the Humanist Society of Friends.

Education v. *Barnette*, 319 U. S. 624, 642. Men may believe even what they are unable to prove or publicly defend, and no governmental body may hold men to answer for the verity or worth of their beliefs for to pretend to such authority is to enter a wholly "forbidden domain." *United States* v. *Ballard*, 322 U. S. 78, 86-87.

The immunity of the conscience and mind of individuals is one of the great personal rights of our people and it is not to be lightly surrendered for it was dearly purchased. It derives from a long and bitter struggle centering fundamentally around the use by government of "test oaths" indistinguishable in principle from the Oath and Affidavit in the instant case, a struggle which reaches back far into the history of this nation and of England. In Sixteenth Century England the state religion through the ecclesiastical courts sought to employ test oaths to search out religious heresy. Under the procedure an accused was brought to trial, placed under oath and then interrogated concerning his religious beliefs. Sir Edward Coke, Chief Justice of Common Pleas, granted a writ of prohibition against the procedure in *Edward's* Case, 13 Rep. 9, declaring that:

> "... in cases where a man is to be examined upon his oath, he ought to be examined upon acts or words and not of the intentions or thoughts of his heart; and if any man should be examined upon his oath of the opinion he holdeth concerning any point of religion, he is not bound to answer the same."

Despite the decision in *Edward's* Case, test oaths persisted in England, and the Court of the Star Chamber, perceiving their utility, sought to utilize such oaths to suppress political dissent and heresy. Again the sanctity of mind and conscience fought for vindication. In 1639 one John Lilburn was summoned before the Star Chamber in the course of this struggle and before that body, Lilburn

refused to answer questions "concerning other men, to insnare me, and to get further matters against me." For this he was condemned to be whipped and pilloried (see 3 How. St. Trials 1315, *et seq.*). But though Lilburn was whipped, the case of "Freeborn John" smashed the inquisition program of the Court of the Star Chamber. In 1641, only two years after Lilburn's trial, Parliament abolished the Court of the Star Chamber and enacted a statute providing that test oaths might no longer be administered on penal matters.

Opposition to test oaths was a matter of strong feeling among the American colonists. It was among the factors which led to the drafting of the Bill of Rights when our Constitution was framed. And as this Court has observed, it cannot now be denied that the Constitution was intended to outlaw in this nation the religious test oaths of English history. *Bridges v. California*, 314 U. S. 252, 265.

The Oath and Affidavit in the instant case bears the evil taint of all test oaths. It reaches directly to and invades the domain of beliefs and opinion, both religious and secular. Like all of its historical predecessors it invades the uttermost refuge of all, a man's mind, to accuse the citizen from out of his own mouth of heretical beliefs and associations. It subverts the presumption of innocence and assumes before hearing that guilt exists warranting forfeiture of livelihood and public stigmatization and it offers the citizens so summoned for judgment only one avenue of escape—"by an inquisition in the form of an expurgatory oath into the consciences of the parties." *Cummings* v. *Missouri*, 71 U. S. (4 Wall) 277, 327. See also *Ex Parte Garland*, 71 U. S. 333. Accordingly, as a test oath and an invasion of the absolutely privileged area of the inviolate conscience of individuals, Paragraph "D" of the Oath and Affidavit is obnoxious to the Constitution and void.

III. The requirement under Paragraph "B" of the Oath and Affidavit that petitioners disclose to the State whether they have since December 7, 1941, ever advocated or been a member of any political party or organization that advocates the overthrow of the governments of the United States, the State of California or the County of Los Angeles by force or violence deprives petitioners of freedom of speech, press, thought, association and assembly and of their personal rights to maintain silence concerning their private beliefs and associations in contravention of the First and Fourteenth Amendments.

Paragraph "B" of the Oath and Affidavit also violates the liberties secured by the First Amendment in both the societal and individual significations of those liberties, though in perhaps a less extreme manner and degree. It requires petitioners to answer under oath whether they have since December 7, 1941 ever advocated or been a member of any political party or organization that advocates the overthrow of ~~the governments~~ of the United States, the State of California, or the County of Los Angeles by force or violence (P. 19; S. 17-18). Absent limitations comporting with the clear and present danger test, which are nowhere provided in the instant case, such a requirement reaches to protected speech, thought and association.

By its very terms the compulsory disclosure here is aimed at mere *advocacy,* not at conduct nor even at advocacy inseparably intertwined with conduct. This the Constitution squarely prohibits. The command of the First Amendment is unequivocal and absolute:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; . . ."

The meaning of this language cannot be misread. Within the area of free speech, press and religion it says that Congress shall make *no law*. It gives to advocacy of ideas, as distinguished from acts and conduct, an absolute immunity and under its mantle men may debate and buffet about in the marketplace of thought any idea whatever. It does not provide that Congress may make no law abridging freedom of speech save and except speech deemed hateful, reprehensible or unwise. It says *no law*; it means *no law*. Whatever the content of the idea, however foolish or hateful it may be deemed by government, under the First Amendment government must content itself with regulating resultant acts and conduct and may not regulate or interfere with the idea itself or the mere advocacy of the idea. For in the area of advocacy and ideas the competition of free debate in the marketplace of thought is conceived as affording the only control acceptable or indeed needful in a free society.

The clear and present danger rule is no exception to this unyielding principle of the First Amendment. That rule amounts only to an effort to define the line between advocacy and action in the twilight zone between the two. It carves out no area of advocacy which may be regulated or proscribed because of the content of the ideas advocated. It seeks only to define where and at what point advocacy of any idea passes so far over into action and conduct as to cease to be advocacy and to thereby lose the immunity of advocacy. That point is not easily defined. As with day and night, advocacy and action upon occasion may so blend one into the other that the boundaries of each may be most difficult to declare. The clear and present danger rule establishes that for purposes of free speech the line between advocacy and action is to be drawn where, because of particular circumstances demonstrated in particular cases, the advocacy concerned flows inseparably into action threaten-

ing immediate and pressing danger to the state. *Bridges* v. *California*, 314 U. S. 252; *Thornhill* v. *Alabama*, 310 U. S. 88; Holmes' and Brandeis' opinions in *Gitlow* v. *New York*, 268 U. S. 652 and *Whitney* v. *California*, 274 U. S. 357. Only then may the state interfere.

This is fundamentally different from declaring that advocacy of certain ideas may be proscribed merely because the content of those ideas is thought reprehensible or hateful. Though it may be difficult in twilight areas to say when day has become night or advocacy has become inseparably joined with action, still the difference between the two categories in each instance remains. Accordingly, where advocacy has not merged with action and conduct, it remains ever advocacy and as such immune from governmental regulation whatever the content of the ideas advocated.

These fundamental principles are decisive in the instant case. Paragraph "B" of the Oath and Affidavit reaches to advocacy *eo nomine*. True the advocacy concerns the idea of the overthrow of government by force and violence. But the words "overthrow" and "force and violence" describe the content of the ideas advocated, not action or conduct undertaken, and the mere advocacy as such of that idea may no more be suppressed than may advocacy of any other idea.

This was made clear by Mr. Justice Holmes in his dissent in the *Gitlow* case, *supra*, where the gravamen of the charge against Gitlow was publication of a document advocating overthrow of government by force and violence.

> "If the publication of this document had been laid as *an attempt* to induce an uprising against government *at once*, and not at some indefinite time in the future, it would have presented a different question . . ."
>
> ". . . If, in the long run, the beliefs expressed in proletarian dictatorship are destined to be accepted by

> the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way."—*Gitlow* v. *New York*, 268 U. S. 652, 673. [Emphasis added.]

Mr. Justice Brandeis reached the same conclusions in the *Whitney* case, *supra*, where the defendant was charged with forming and belonging to an organization which advocated the overthrow of the government by force and violence (see 274 U. S. 357, 379). These views have been expressly adopted by majority decisions of this Court and are now the law. *Bridges* v. *California*, 314 U. S. 252, 262-263; *Schneiderman* v. *United States*, 320 U. S. 118, 137; *Thomas* v. *Collins*, 323 U. S. 516, 537; see also, *DeJonge* v. *Oregon*, 299 U. S. 353; *Herndon* v. *Lowry*, 301 U. S. 242; *Cantwell* v. *Connecticut*, 310 U. S. 296.

IV. The violations of freedom of speech, press, religion, thought, association and assembly in the instant case may not be excused merely because petitioners are county employees.

The Court below sought to justify its decision on the authority of this Court's decision in *United Public Workers* v. *Mitchell*, 330 U. S. 75, and also on the sweeping proposition that petitioners as government employees had bargained away any rights which might be affected by the Oath and Affidavit when they accepted government employment. Neither proposition is sustainable.

This Court in *United Public Workers* v. *Mitchell* had before it and decided no question comparable in any way to the issues here. The single question there presented and decided was whether a Federal statute prohibiting employees in the Executive Branch of the Federal government on pain of discharge from taking any "active part in political management or in political campaigns" could be

constitutionally upheld as applied to the narrow facts of the particular case there. As applied there the statutory restraint affected only an employee who had been a ward executive committee man of a political party and who had been politically active in an election as a worker at the polls and a paymaster over other party workers. This Court upheld the restraint as applied in that narrow case but expressly observed that it was deciding no more and that the case before it involved no limitation on the employee's freedom of speech save as he might be called on as a political committee man to speak specifically in that capacity, and that in all other respects his "expressions, public or private, on public affairs, personalities and matters of public interest" were unrestricted. *United Public Workers* v. *Mitchell*, 330 U. S. 75, 94, 100.

No such narrow and limited interference with freedom of speech is involved here. To the contrary, in the case at bar, within the sweeping area of intellectual subjects indicated by the 144 listed lawful organizations and 2 lawful publications, the State seeks to demand compulsory accounting to it by petitioners of the manner in which they have exercised all of the great liberties of speech, press, thought, association and assembly in violation of the privacy of their conscience and in a manner calculated to interfere with, coerce and intimidate them in the performance of their sovereign duties as persons and citizens. *United Public Workers* v. *Mitchell* affords the State no comfort in its assertion of such unconstitutional command.

Neither may the State justify its action on the basis of any considerations growing out of the employee status of the petitioners. The court below sought to so justify and support its decision by arguing that petitioners "impliedly surrendered" or bargained away their rights to freedom of speech and its correlatives by accepting gov-

ernment employment (P. 51), and by arguing that wherever the State stands in the position of an employer it enjoys, just as any private employer, complete right to "demand unquestioned loyalty in the manner it lays down." (P. 60).

These attempted justifications fundamentally misconceive the true position and relation of the parties. Petitioners may be County employees but notwithstanding that they remain members of the American people as well. The restrictions on freedom of speech worked in the instant case reach immediately to 20,000 such members of the American people, all of whom, like petitioners, are employed by the County of Los Angeles. And if the example of the instant case be upheld, then like restrictions may be imposed on 10% of the entire population of our nation for today one out of every ten persons is employed by either Federal, State or Local government.[8] Moreover, even as government employees remain persons and citizens, so too governments even though they become employers remain always something more and something less than private employers—they always remain *governments*. The County of Los Angeles is no exception. Being a governmental body, the County, no matter that it chooses to call itself here an "employer", remains for all that a government bound by the limitations of the Federal Constitution. Under those limitations it possesses no power to and should have no desire to invade the area of the sovereign liberties reserved to the people of the United States or to seek to coerce or intimidate the people or any one or more among them in their exercise of those liberties.

The concept that an employee must be loyal to his employer is a concept pregnant with the gravest dangers and

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[8] (See footnote 5, *supra*).

errors if it be applied as a ready-made pattern to government viz-a-viz citizens. Loyalty there is no such simple concept. But however the loyalty properly owed by the people may be conceived and defined, certain it is that the core of that loyalty must include steadfast and faithful discharge of their sacred obligation under the Constitution to think and speak freely, fearlessly and according to their honest conscience on all subjects of public concern to the end that they may "shape the destiny" of this nation as wisely as their most conscientious efforts may enable them. This the State's action here wholly fails to apprehend and respect, yet this is the deepest trust of all imposed by our compact of government. It is laid on the shoulder of all citizens equally however they may earn their living and whoever may be their employer.

It is a legitimate and worthy interest on the part of any State government to seek to strengthen and secure the form of government created and established by the Constitution and to preserve it from real disloyalty or attack from whatever quarter. But the action here undertaken betrays a tragic misconception as to means appropriate to such end. To establish security standards where uniquely necessary for government employees holding sensitive jobs vital to national security may be one thing but it is another and tragically different thing which is undertaken here. Here, in the name of preserving our constitutional form of government, the State would destroy its most important foundational block—the free exercise according to conscience by the American people of their sovereign liberties to freedom of speech, thought and association. Without these the shell of our proud way of life may remain, but there can be no life within. Only free men can possess a free nation.

Finally, to suggest that citizens by private employment contracts or any other contracts with government officers

may bargain away or "impliedly surrender" their duty under the Constitution to exercise their sovereign liberties of speech, press, thought, association and assembly according not to the instructions of others but to the dictates of their honest conscience alone, is to suggest a dishonor to the nation. Petitioners in the instant case could not even if they would sell in private contract those sovereign liberties of a free people which their forefathers secured for them by mutually pledging their lives, their fortunes and their sacred honor.

Conclusion

WHEREFORE, the Petitions for Writs of Certiorari to the District Court of Appeal of the State of California, Second Appellate District, should be granted.

Respectfully submitted,

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JOHN T. McTERNAN,
WILLIAM B. MURRISH,
Of Counsel in Parker, et al.

A. L. WIRIN,
FRED OKRAND,
Counsel for Petitioner Steiner.

APPENDIX "A"

Oath and Affidavit

DEPARTMENT .....

A. OATH OF OFFICE OR EMPLOYMENT

I, ..., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of California, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office or employment on which I am about to enter or am now engaged. So Help Me God.

B. AFFIDAVIT RE SUBVERSIVE ACTIVITY

I do further swear (or affirm) that I do not advocate, nor am I now a member, nor have I been since December 7, 1941, a member of any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles, by force or violence, except those specified as follows: ..... and that during such time as I am an officer or employee of the County of Los Angeles, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles by force or violence.

C. AFFIDAVIT RE ALIASES

I do further swear (or affirm) that I have never used or been known by any names other than those listed as follows:

.....

D. MEMBERSHIP IN ORGANIZATIONS

I do further swear (or affirm) that I have never been a member of, or directly or indirectly supported or followed

any of the hereinafter listed organizations, except those which I indicate by an X mark.

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.....

Subscribed and sworn to before me this .....

day of ....., 1947.

J. P. MORONEY,
County Clerk,

By .....
Deputy.

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IN THE

Supreme Court of the United States

October Term, 1949.

No. 50.

JULIA LEARNED STEINER,

Petitioner,

vs.

COUNTY OF LOS ANGELES, *et al.*

On Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District.

MOTION FOR INTERVENTION AS PARTIES PETITIONER WITH AFFIDAVITS AND MEMORANDUM IN SUPPORT THEREOF.

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IN THE

Supreme Court of the United States

October Term, 1949.
No. 50.

JULIA LEARNED STEINER,

Petitioner,

vs.

COUNTY OF LOS ANGELES, *et al.*

On Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District.

MOTION FOR INTERVENTION AS PARTIES PETITIONER.

Julia Learned Steiner, Margaret Estelle Elder, Violet R. Tapper and Joan Dugdale, move this Court as follows:

That Margaret Estelle Elder, Violet R. Tapper and Joan Dugdale, be permitted to intervene and be joined as petitioners in the above entitled action, for the reasons and on the grounds below set forth.

1. The above-entitled suit is a representative action commenced in the Courts of the State of California by Julia Learned Steiner on her own behalf and on behalf of the 20,000 similarly situated civil service employees of the County of Los Angeles. The writ of certiorari

was obtained herein in an attempt to secure a reversal of the decision of the California Courts upholding the County's requirement that all such employees execute an oath and affidavit pertaining to loyalty. As will more fully appear from the attached affidavits, the movants other than Steiner are, and have at all times been, members of the class represented by her in this action.

2. In opposition to Steiner's petition to this Court for a writ of certiorari, respondents argued *inter alia* that the cause had become moot by reason of petitioner's resignation from County employment. (See Brief of Respondents in Opposition to Petition for Writ of Certiorari, pp. 31-32.)

Since it is true that Steiner has ceased to be a County employee, movants are concerned lest Steiner's personal change of status may result in refusal by this Court to adjudicate the issues herein on the merits. The movants for intervention have, as shown in more detail in their affidavits, relied upon the prosecution of this action as a means of preventing the County's penalizing them for their refusal to comply with the requirement that they execute the Loyalty Oath and affidavit, whose validity is here in issue, and as a means of determining whether or not they have the constitutional right to continue to refuse to execute it. At this stage of the instant proceedings they look to an adjudication by this Court upon the merits as their opportunity to secure a reversal of the decision of the California Courts that the County can constitutionally require them to execute the Oath. Not only do they rely upon such an adjudication to obtain protection at this time from enforcement of the requirement, but, as shown in the accompanying memorandum, they would be foreclosed, in case of a failure to secure a favor-

able decision in the pending litigation, from bringing another action to attempt to vindicate their rights.

3. The movants for intervention have been in no way dilatory in that they have not sought intervention at any prior stage of the proceedings. They have heretofore regarded themselves as adequately and fully represented by Steiner, and the need for their intervention has only arisen because respondents in this Court have urged the dismissal of the action as moot.

4. Accordingly, petitioner Steiner, in fulfilment of the duties she assumed as representative of her class, and the other movants herein, in order to protect themselves and their fellow employees against the danger of dismissal of this cause which was brought in part for their benefit and upon which they have relied for an adjudication of their rights, make this motion for intervention in order to obviate the possibility of a dismissal herein on grounds of mootness by reason of Steiner's change of status. The propriety of such intervention and its effectiveness to prevent such a dismissal are more particularly shown in the attached memorandum.

Movants also pray for such further or different relief as to the Court may seem just and proper.

Respectfully submitted,

A. L. WIRIN,

FRED OKRAND,

NANETTE DEMBITZ,

Attorneys for Movants Steiner, Elder, Tapper and Dugdale.

IN THE

Supreme Court of the United States

October Term, 1949.

No. 50.

JULIA LEARNED STEINER,

Petitioner,

vs.

COUNTY OF LOS ANGELES, *et al.*

On Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District.

AFFIDAVIT IN SUPPORT OF MOTION FOR INTERVENTION AS PARTIES PETITIONER

State of California, County of Los Angeles—ss.

Margaret Estelle Elder being duly sworn, deposes and says:

1. I have been continually since 1942, and now am, a permanent Civil Service employee of the County of Los Angeles. I am now employed in the capacity of Librarian II in the Los Angeles County Public Library.

2. The conditions of my tenure and of my discipline and regulation as an employee of the County of Los Angeles are, and have at all times been, in all respects the same as those which governed Julia Learned Steiner in her status as an employee of said County, at the time of the filing of the complaint in the above entitled action;

3. I was at the time of the filing of the complaint in the above entitled action, and now am, subject to the County's requirement of execution of the Loyalty Oath and affidavit and to the threat of penalty for failure to execute it, as set forth in such complaint;

4. Like petitioner Steiner, I am in jeopardy of penalization by the County.

5. I became acquainted with petitioner Steiner in the course of my employment because we were both employed for several years in the same place and type of work; I agree with said Steiner that it is objectionable and improper for the county to require such an affidavit concerning membership in, or direct or indirect support, or following of named organizations from its employees, and I agree with her with respect to the prosecution of a suit to prevent enforcement of the requirement;

6. I at all times regarded and now do regard the above entitled representative action commenced by Steiner as prosecuted in part on my behalf; I had trust and confidence that such action would be prosecuted in the same manner as if I had personally instituted it; and because of the institution and prosecution of such action by Steiner, I did not personally institute an action to litigate the validity of the County's requirement;

7. I have relied upon the Steiner action as a means of preventing the County from penalizing me for my refusal to comply with its requirement that all employees execute the affidavit, and as a means of vindicating what I believe to be my constitutional rights; I have, because of the foregoing circumstances and my interest in this action since its inception, more assurance of the possibility of a favorable adjudication on the merits as to my constitutional rights in the instant case than in the case of *Parker v. County of*

Los Angeles, No. 49, with which it is here consolidated; and I therefore rely upon the adjudication of this action in this court as my opportunity to secure the reversal of the decision of the Courts of California that the County's requirement is constitutional;

8. There was no prior stage in this action when my intervention seemed to me necessary for the prosecution of the action in the manner I deemed desirable, but I am informed by the attorneys in the action that my intervention at this time may be necessary to prevent its dismissal as moot;

9. I therefore desire to intervene herein to assure an adjudication on the merits in this action as to the issue of the validity of the County's requirement that I execute the affidavit, which is described in the complaint in this action.

Violet R. Tapper has been continuously employed by the County of Los Angeles since 1926. She is now a permanent Civil Service Employee of said county and has been such at all times herein involved. She serves in the capacity of First Assistant, Branches Division, Librarian IV. She is similarly situated with affiant and has advised her that she desires to join in this motion. Said Tapper is presently on vacation and hence unable to sign an affidavit on her own behalf in time for its filing herein.

MARGARET ESTELLE ELDER.

Subscribed and sworn to before me this 20th day of October, 1949.

FRED OKRAND,
Notary Public in and for said County and State.

IN THE

Supreme Court of the United States

October Term, 1949.

No. 50.

JULIA LEARNED STEINER,

Petitioner,

vs.

COUNTY OF LOS ANGELES, *et al.*

On Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District.

AFFIDAVIT IN SUPPORT OF MOTION FOR INTERVENTION AS PARTIES PETITIONER

State of California, County of Los Angeles—ss.

Joan Dugdale being duly sworn, deposes and says:

1. I have been continually employed by the Los Angeles County Public Library since September 1947. I am a permanent Civil Service Employee employed in the capacity of Librarian I.

2. The conditions of my tenure and of my discipline and regulation as an employee of the County of Los Angeles are, and have at all times been, in all respects the same as those which governed Julia Learned Steiner in her status as an employee of said County, at the time of the filing of the complaint in the above entitled action;

3. I was at the time of the filing of the complaint in the above entitled action, and now am, subject to the County's requirement of execution of the Loyalty Oath and affidavit and to the threat of penalty for failure to execute it, as set forth in such complaint;

4. Like petitioner Steiner, I am in jeopardy of penalization by the County.

5. I became acquainted with petitioner Steiner in the course of my employment because we were both employed for several years in the same place and type of work; I agree with said Steiner that it is objectionable and improper for the County to require such an affidavit concerning membership in, or direct or indirect support, or following of named organizations from its employees, and I agree with her with respect to the prosecution of a suit to prevent enforcement of the requirement;

6. I at all times regarded and now do regard the above entitled representative action commenced by Steiner as prosecuted in part on my behalf; I had trust and confidence that such action would be prosecuted in the same manner as if I had personally instituted it; and because of the institution and prosecution of such action by Steiner I did not personally institute an action to litigate the validity of the County's requirement;

7. I have relied upon the Steiner action as a means of preventing the County from penalizing me for my refusal to comply with its requirements that all employees execute the affidavit, and as a means of vindicating what I believe to be my constitutional rights; I have, because of the foregoing circumstances and my interest in this action since its inception, more assurance of the possibility of a favorable adjudication on the merits as to my con-

stitutional rights in the instant case than in the case of *Parker v. County of Los Angeles,* No. 49, with which it is here consolidated; and I therefore rely upon the adjudication of this action in this court as my opportunity to secure the reversal of the decision of the Courts of California that the County's requirement is constitutional;

8. There was no prior stage in this action when my intervention seemed to me necessary for the prosecution of the action in the manner I deemed desirable, but I am informed by the attorneys in the action that my intervention at this time may be necessary to prevent its dismissal as moot;

9. I therefore desire to intervene herein to assure an adjudication on the merits in this action as to the issue of the validity of the County's requirement that I execute the affidavit, which is described in the complaint in this action.

JOAN DUGDALE.

Subscribed and sworn to before me this 20th day of October, 1949.

FRED OKRAND,

Notary Public in and for the County of Los Angeles, State of California.

IN THE

Supreme Court of the United States

October Term, 1949.
No. 50.

JULIA LEARNED STEINER,

Petitioner,

vs.

COUNTY OF LOS ANGELES, *et al.*

On Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District.

MEMORANDUM IN SUPPORT OF MOTION FOR INTERVENTION AS PARTIES PETITIONER.

This action is a representative action, commenced in the Courts of the State of California on behalf of the plaintiff and of the class of persons similarly situated, as specified in the complaint. [See Complaint, Tr. of Rec. pp. 1-2.] Under California law, which would seem to govern as to the incidents of the action, as indeed under Federal law and that generally prevailing in other jurisdictions,[1] there is a judicial duty to protect members of

[1]Compare Rule 23(c) of the Federal Rules of Civil Procedure which prohibits the dismissal or compromise of any class action without Court approval, and provides that in a representative action of the type at bar notice shall be given of the proposed dismissal to all members of the class if the Court so directs. And see *Webster, Eisenlohr, Inc. v. Kalodner*, 145 F. 2d 316 (C. C. A. 3, 1944), cert. den. 325 U. S. 867; *Lucking v. First Natl. Bank Detroit*, 142 F. 2d 528, cert. den. 323 U. S. 740. For similar doctrine see *Hanna v. Lyon*, 179 N. Y. 107, 71 N. E. 778; *Maas v. Sullivan*, 142 Misc. 295, 207 N. Y. Supp. 181, aff'd 213 App. Div. 820, 208 N. Y. Supp. 895.

the class represented in a representative action against dismissal of the cause. As to the California law, see: *Scott v. Donahue*, 93 Cal. App. 256; *Spellacy v. Superior Court*, 23 Cal. App. 2d 142; *Whitten v. Dabney*, 171 Cal. 621; *Russell v. Weyand*, 5 Cal. App. 2d 259; *Loeb v. Berman*, 217 Cal. 716; *Waterman v. Lawrence*, 19 Cal. 210.

For the representative plaintiff in effect merely sets the judicial machinery in motion;[2] the represented persons in a class action have rights similar to those of the nominal plaintiff. See *Young v. Higbee Co.*, 324 U. S. 204, 209. They are "a kind of co-plaintiff's with those named" (*The Mayor etc. v. The Alexandria Canal Co.*, 12 Pet. (U. S.) 91, 100.) This doctrine as to the relation of the plaintiff and the class and the corollary principle of protection for members of the class against dismissal of the suit, are inherent in the nature of the class action, and obviously necessary to prevent its becoming an instrument of inequity; for the theory of the representative action is that the members of the class are in effect joined as plaintiffs, being omitted by name solely because of their numbers.[3] [See allegation of complaint herein, R. 2, that the represented parties herein are too numerous to be brought before the Court.]

To effectuate these principles, intervention of members of the represented class must be permitted in the event that they would suffer prejudice from dismissal of the

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[2]See *Liken v. Shaffer*, 64 Fed. Supp. 432 (D. Io., 1946).

[3]See *Spellacy v. Superior Court*, 23 Cal. App. 2d 142; and see *Grand Rapids Furniture Co. v. Grand Rapids Furniture Co.*, 127 F. 2d 245 (C. C. A. 7th, 1945), pointing out that the Federal rule relating to class actions impliedly recognizes the right of all members of the class to join as plaintiffs if they so desire.

action because of a deficiency on the part of the nominal plaintiff;[4] the intervenors have, under firmly established doctrine, all the rights of the original parties[5] and the action thereafter may be continued in their names if it cannot be continued in the name of the original nominal plaintiff.[6]

Permission to the movants to intervene herein so that the suit may, if necessary, be continued in their names would seem indubitably correct procedure in the instant case. Here respondents have contended that the cause should be dismissed for mootness because the suit involves a requirement imposed on employees and the employee status of Steiner, the nominal plaintiff, has terminated.

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[4]See Hornstein, *Problems of Procedure in Shareholders' Derivative Suits*, 42 Columbia Law Review (1942), 572, 576, pointing out that intervention of other members of the class in representative actions in the Federal courts is particularly frequent for the purpose of preventing an "untimely dismissal" of the action because of a defect with respect to the plaintiff's standing. See also *Cohen v. Young*, 127 F. 2d 721 (C. C. A. 7, 1942); *Malcolm v. Cities Service Co.*, 2 F. R. D. 405 (D. Del., 1942); *American Brake Shoe & Foundry Co. v. Interborough Rapid Transit Co.*, 3 F. R. D. 162 (D. N. Y., 1942); *Golconda Petroleum Corp. v. Petrol Corp.*, 46 Fed. Supp. 23 (D. Cal., 1942).

Intervention would be a matter of right under Rule 24(a) of the Federal Rules if the application to intervene were made for the purpose of preventing dismissal and the applicant would be bound by the judgment in the action; in the absence of the latter factor intervention would be permissive under Rule 24(b).

[5]See *Elder v. Western Mining Co.*, 280 Fed. 569, 578 (C. C. A. 8); *Piccard v. Sperry Corporation*, 36 Fed. Supp. 1006 (D. N. Y., 1941), aff'd 120 F. 2d 328; *Godfrey L. Cabot, Inc. v. Binney & Co.*, 46 Fed. Supp. 346 (D. N. J., 1942); *In re Raabe, Glissman & Co.*, 71 Fed. Supp. 678 (D. N. Y., 1947).

[6]See *Cohen v. Young*, 127 F. 2d 721 (C. C. A. 7th, 1942), and *American Brake Shoe & Foundry Co. v. Interborough Rapid Transit Co.*, 3 F. R. D. 162 (D. N. Y., 1942), where intervenors in class suits were held to have the right to continue suits and to appeal in their own names. And see *Hanna v. Lyon*, 179 N. Y.

Such a dismissal of the case would be highly prejudicial to the employees who were represented by Steiner and who are here moving for intervention, and to the many others similarly situated. As shown in their affidavits, they have jeopardized their livelihood as County employees by refusing to execute the affidavit required by the County and they have relied upon the instant action for protection against penalization for such refusal and for the vindication of their constitutional rights; at this stage of the proceeding they are looking to the adjudication of this case by this Court for a reversal of the unfavorable decision of the California courts. Failure to secure a favorable decision on the merits in the instant litigation would not only mean the loss of their opportunity to protect themselves at this time against penalization for refusal to execute the Oath, but also would in all likelihood mean its permanent loss, for the issue of the constitutionality of the County's loyalty requirement, whether or not determined by this Court, would be *res adjudicata* in the California courts. Thus, there is no

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107, 71 N. E. 778, where it was established that the plaintiff stockholder who had commenced a class action was ineligible to bring it because he had sold his stock prior to its commencement; held by the Court of Appeals of New York that it was error to dismiss the action in view of the intervention of a *bona fide* member of the class. See, also, *Wolke v. Poretsky*, 144 F. 2d 505 (App. D. C. 1944), cert. 323 U. S. 777, where the intervenor was held to have the right to prosecute an appeal in lieu of the plaintiff; *Bragg v. Gerstel*, 148 F. 2d 757 (C. C. A. 5th, 1945), where a petitioning intervenor was substittued as appellant to prevent the dismissal of an appeal where the appeal had been taken in the name of one who no longer had standing to sue. The California rule is in accord. *Scott v. Donahue*, 93 Cal. App. 256; California Code of Civil Procedure, Sec. 385; *Davis v. Rudolph*, 80 Cal. App. 2d 397.

doubt that the movants for intervention satisfy the test of suffering prejudice from the possible dismissal of the action; indeed, using Rule 24(a) of the Federal Rules of Civil Procedure as the standard, their intervention is a matter of right, since they are bound by the judgment in the instant litigation.[7]

While the movant employees would thus be vitally prejudiced by dismissal of the action for want of a suitable party petitioner, the respondents would be in no way affected by the grant of this motion for intervention. The movants are and always have been, as stated in the complaint, in a precisely similar situation to Steiner's with respect to the issue herein, in that their status, tenure and discipline as employees was and is subject to precisely the same regulations as Steiner's; like Steiner they were subject to the requirement of execution of the Loyalty Oath and to threats of penalization for failure to execute it; and like Steiner they refused to execute it. No new fact or issue of any sort will be introduced into the action by their intervention; the intervenors and the original parties would have the "same legal interests (and) are controlled by the same facts" so that "no possible injustice or disadvantage could follow." *Elder v. Western Mining Co.*, 280 Fed. 569, 578 (C. C. A. 8).

The fact that the movants did not participate in the courts below does not mitigate against their motion for

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[7]See *Weeks v. Barcco Oil Co.*, 125 F. 2d 84 (C. C. A. 7th, 1941).

intervention herein. No occasion arose for them to seek to protect their interests by intervention until the case reached this Court; they have therefore been in no way remiss or dilatory in asserting their interest in the action.[8]

The principle that other members of the class must be protected against dismissal of the suit applies whenever their interests are threatened by dismissal whether it be in the court of original jurisdiction or on appeal. See the *Spellacy* and *Scott* cases, cited *supra*. Accordingly, no distinction can be made between courts of original jurisdiction and courts of appeal for the purpose of determining the right of members of the class to intervene for protection against such dismissal. The appellate Federal courts customarily grant to persons who have not appeared in the court of original jurisdiction the right to intervene in the appeal where such permission is necessary to the ends of justice. See *United States v. St. Louis Terminal Co.*, 236 U. S. 194, where this Court granted a motion for intervention by parties who had not appeared below and who would be affected by this Court's disposition of the cause;[9] *Elder v. Western Mining Co.*, 280 Fed. 569 (C. A.

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[8]Compare *Malcolm v. Cities Service Co.*, 2 F. R. D. 405 (D. Del., 1942), holding that the defense of laches could not be invoked against stockholders seeking to intervene in a class action in absence of proof that they had known at a prior time they were not adequately represented therein.

[9]This Court granted a motion for intervention in this Court by persons who had not been allowed to intervene below, stating:

> "The challenge by the United States of the right to hear intervening petitioners is without merit, since even although the petitioners were not parties, they are entitled to be originally heard concerning the settlement of the decree insofar as it might operate prejudicially to their rights." (236 U. S. at p. 199.)

8th, 1922), where persons were granted the right to intervene in the Court of Appeal and "considered as though they had been made parties complainant before final judgment below"; *Wolke v. Poretsky*, 144 F. 2d 505 (App. D. C., 1944), cert. den. 323 U. S. 777, where persons were allowed to intervene after the final decree and held to have the right to appeal in lieu of the plaintiff. And in *Walling v. James V. Reuter*, 321 U. S. 826, this Court suggested the appropriateness of substitution in this Court of a party respondent so that an effective judgment could be rendered.

In sum, therefore, we submit that the effectuation of the principles established in California as well as Federal law with respect to the rights of the members of the represented class in a representative action, require the grant of the motion for intervention as parties petitioner; that the prior procedure of this Court and the lower Federal Courts shows the propriety of such grant; and that there is no consideration of law or policy mitigating against the grant of the motion.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, ~~1948~~ 49

No. ~~711~~ 49

HELEN PARKER, *et al.*,

Petitioners,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Respondents.

No. ~~712~~ 50

JULIA LEARNED STEINER,

Petitioner,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Respondents.

Petitioners' Special Reply Memorandum in Answer to Procedural Law Sections of Brief of Respondents.

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IN THE

Supreme Court of the United States

October Term, 1948.

No. 711

HELEN PARKER, *et al.*,

Petitioners,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Respondents.

No. 712

JULIA LEARNED STEINER,

Petitioner,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Respondents.

Petitioners' Special Reply Memorandum in Answer to Procedural Law Sections of Brief of Respondents.

I.

Introduction.

Although aware that Rule 38 of this Court does not in ordinary circumstances contemplate any rebuttal by a petitioner in certiorari matters, petitioners in the instant case conceive the unusual nature of the brief filed by respondents makes it appropriate if not mandatory that brief reply be made thereto.

Respondents have brushed aside all of the substantive issues of constitutional law raised by the petition and have devoted virtually the entirety of their brief to arguments urging this Court to deny hearing on procedural grounds alone. The supposed objections of procedural law raised by respondents are wholly misconceived and petitioners hasten to so demonstrate lest this Court be misled into denying consideration of the merits of the petition. In actuality consideration on the merits in the instant case is not only appropriate and proper in all respects but is in fact required by the deep obligations which attend this Court in its position as the nation's highest tribunal for the determination of questions of Federal Constitutional law. The substantive issues raised by the petition reach to the roots of free government in our nation and their full consideration and adjudication by this Court on the merits is a matter required by imperative public interest.

II.

The Portion of the Decision Below Which Is in Issue Here on Certiorari, Namely, Whether the County Might Constitutionally Compel County Employees to Execute the Oath and Affidavit Attached to the Complaint, Rests on No Independent State Ground but Upon a Flat Holding That Such a Requirement Is Constitutional.

Respondents aver that the Court below rested its decision not on grounds of constitutional law but on the failure of petitioners to exhaust administrative remedies before resorting to the courts, or upon the ground that the claimed threat of discharge was too speculative and premature to sustain an action. As to that portion of the decision below which alone petitioners have brought here on certiorari, the objections urged have no application. The portion concerned is that addressed to the question of the

right of the County to exact from County employees the compulsory disclosures respecting thought, speech and association contained in the oath and affidavit attached to the complaint. Petitioners contended below, as they contend here, that the exaction of such disclosures respecting thought, speech and association would be *per se* an invasion of petitioners' rights under the First and Fourteenth Amendments to the Federal Constitution, and that by virtue of that Constitution petitioners had an absolute right to refuse to execute the oath and affidavit as demanded. As to this issue[1] the court below found no procedural objection. It proceeded to a square consideration of that issue on the merits and ruled thereon adversely to petitioners' contentions. Witness these acts by the court below:

1. It posed the issue cleanly and precisely at the very outset of its opinion, setting forth the oath and affidavit at length and declaring the question to be the right of the

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[1]It is true enough that as to certain other questions raised by other portions of petitioners' complaint the court below did raise the procedural objections noted in respondents' brief and did rule that as to those questions the action was improvident and premature. In particular, the Court so ruled as to petitioners' charges that the respondents had instituted the overall program of investigation described in the complaint, of which the oath and affidavit was but a component part, for the avowed purpose of uncovering the thoughts, speech and associations of all county employees with the intent to sit in judgment thereon and to inflict discharge or other penalty on all employees whose views or associations might be found "subversive"—in the uncontrolled discretion of the respondents. As to this portion of the complaint, the court below did declare that the question of possible discharge was premature and that petitioners' appropriate remedy was by way of administrative review after actual discharge, if any, should take place. But that matter is no longer of significance in petitioners' case. Petitioners seek no review of the decision below on that score.

County to require County employees to execute same [P. 48-49][2].

2. It then announced in a topic sentence of explicit and unmistakable terms the purport of its holding on the issue so posed. It stated:

> "This question must be answered in the affirmative. The mere asking of the question points unerringly to the answer any *loyal, sane,* citizen of the United States of America would give to it. It is an unequivocal 'Yes'." [P. 49.]

3. It then developed this thesis by relating at length the reasons and analogies persuading it that the requirement was constitutional. It found the oath and affidavit sustainable, first, on analogy to the power of the nation to compel service in the armed forces, reasoning that if citizens may thus be compelled to risk even life and limb, then, "any state in attempting to perpetuate its loyalty to the union has the unquestioned right and duty to exact from its citizens adherence to all lesser measures which have for their purposes the preservation of our form of government and the repression of its enemies" [P. 51]. It found the oath and affidavit sustainable also on analogy to the oath required of aliens seeking admission to citizenship [P. 57]. It further found the oath and affidavit permissible on analogy to the oaths required of applicants seeking membership in the Elks [P. 56-57]. Finally, it found the oath and affidavit sustainable on the basis of the employer-employee relationship. It said on this score:

> ". . . when a person enters the employ of this state or any subdivision thereof, he impliedly sur-

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[2]The references throughout this memorandum are to the Parker Record only and are indicated thusly: "[P. 1]," meaning "Parker Record, page 1."

renders certain natural rights which would remain his if he were a private citizen only just the same as he would surrender certain privileges if he were to enter private employment." [P. 51-52.]

4. It concluded on the force of the above analogies that execution of the oath and affidavit might lawfully and constitutionally be required of all County employees as a condition of continued employment. In words which cannot be misread, it declared:

". . . If they cannot subscribe to the prescribed affidavit, they may join those who serve themselves in the ranks of private employment." [P. 56.]

Respondents would obfuscate and obscure the above plain holding by the court below on the question in issue here on certiorari by quoting from later portions of the court's decision which are not in point in subject matter. Respondents quote in this manner the following statements by the court below:

"'From what has so far been said, it is self-evident that neither the Board nor its agents can discharge a civil service employee for any cause that the Civil Service Commission finds insufficient. Accordingly, if in the view of the Board of Supervisors, or its agents as the appointing power, a civil service employee should be discharged on the sole ground that the employee is "subversive", the discharge or attempt to discharge on that ground is of no effect if, on hearing, the Commission holds otherwise.'" [P. 59.]

> "'. . . Whether the appointing power will or will not discharge employees as claimed by the plaintiffs, for causes of the character enumerated, and whether the Civil Service Commission will uphold such discharges, if any, on such causes, are not matters upon which this Court may speculate of adjudicate at this time. . . .'" [P. 63.]

On their face and particularly when read in context, these observations plainly relate to the separable claim by petitioners that the respondents had threatened to discharge employees whose views displeased them as "subversive"[3] and *not* to the portion of petitioners' complaint challenging *per se* the right of the County to require execution of the oath and affidavit on pain of discharge for refusal to sign.[4]

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[3]See discussion in footnote 1, *supra*.

[4]Especially is this obvious with respect to the language of the court below which adverts to the concept of exhaustion of administrative remedies. Plainly the allusions to that doctrine could not have been intended to have any reference to the portion of petitioners' action contesting the constitutionality of the oath and affidavit as a condition of continued employment. There no administrative remedy exists. When respondents contend otherwise the only meaning their arguments can have is that petitioners should be required to first suffer unemployment before they might obtain standing to question the state's test oath. To say that petitioners must forfeit their means of livelihood and endure unemployment throughout lengthy litigation and review as the price for requesting adjudication of claimed constitutional rights would be to pervert and distort the doctrine of administrative remedies beyond recognition. *Cf. Ex parte Young*, 209 U. S. 123; *Terrace v. Thompson*, 263 U. S. 197, 214; *Grosjean v. American Press Co.*, 297 U. S. 233; *Perkins v. Elg*, 99 F. 2d 408, 413-414 (affd., 307 U. S. 325).

III.

The Petition for Certiorari Presents a Case or Controversy Cognizable in the United States Supreme Court.

The County Loyalty Order provides that it will "*require* all officers and employees coming under the jurisdiction of the Board of Supervisors . . . to execute an affidavit . . ." [P. 17.] As defined in Webster's International Dictionary (2d Ed., 1934) "require" means "to demand," "to exact," "to impose a command or compulsion." The Loyalty Order therefore places an immediate, unqualified duty upon petitioners and their class to execute the affidavit as part of the duties of their employment. This is demanded of them by their superiors in precisely the same manner as attendance upon the job and performance of the duties and functions of the position. The requirement of a position is a requirement of continued employment.

The complaint alleges that the County officers "have threatened and do now threaten, and will, . . . cause plaintiffs . . . to be discharged or otherwise penalized in their employment unless they execute the oath and affidavit prescribed and required by . . . said Loyalty Check" [Par. VII, P. 5]. That which the Loyalty Order on its face requires as a condition of employment the County officers have threatened to enforce by discharge or other penalty. The order itself and the threatened enforcement of it not only place petitioners under a present duty to comply but also subject them to imminent peril of legal injury. Petitioners and respondents therefore had interests which were "legal" or "protected," were actually "adverse," and the conflicting claims of rights had reached the stage of antagonistic assertion which "ripened" them

into "actual controversy" (see Borchard, *Declaratory Judgments*, pp. 39, 41-3, 50-3).

Petitioners' action in the California courts was to enjoin the imposition of such a requirement and to obtain a declaration that the County officers may not make or enforce such a requirement for the reason that such would deprive petitioners of their rights under the First and Fourteenth Amendments to the Constitution of the United States [see complaint, par. XII, P. 8; par. II (1), (6), (7), (12) and (13), P. 12-14; pars 1(a) and (b) and 2 of Prayer, P. 14-16]. The requirement, as alleged, is one which deprives petitioners of substantial personal rights, and in fact it was of a nature and quality to do so as our petition here set forth at length.

It is significant that the County does not meet petitioners in this central issue of the case. Respondents rather confine themselves to the observation that no one was alleged to have been discharged and therefore the complaint raised no case or controversy. The controversy here is whether plaintiffs may be forced to give up the most precious rights of a free people. Petitioners claim that the Federal Constitution deprives the County of right and power to "require" disclosure of political opinion and affiliation; adversely the County has asserted and proceeded to enforce the right and power to "require" such a disclosure. In this conflict of rights and powers the stakes are petitioners' jobs.

The facts alleged constitute a justiciable controversy under the tests laid down by this Court. The controversy is "definite and concrete, touching the legal relations of the parties having adverse legal interests." It is "real and substantial . . . : admitting of specific relief through a decree of a conclusive character as distinguished from

an opinion advising what the law would be upon a hypothetical state of facts." (*Aetna Life Ins. Co. v. Haworth*, 300 U. S. 227, 240-1.) Petitioners are not asking the Court to advise them on a hypothetical state of facts. They are immediately faced with the necessity of giving up personal rights of great importance or losing their jobs. In the language of the *Haworth* case this is not a "difference or dispute of a hypothetical or abstract character" (300 U. S. at p. 240) but rather one which directly affects the relationship of petitioners and respondents as employees and employers. As to petitioners their constitutional rights and their jobs are no more academic than the County's right to control and discipline its employees. The two groups of rights stand opposed at a point where one or the other must give way—now.

As this Court has recognized, the "difference between an abstract question and a 'controversy' . . . is necessarily one of degree, and it would be difficult, if it would be possible, to fashion a precise test for determining in every case whether there is such a controversy" (*Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U. S. 270, 273). In the *Haworth* case, *supra*, the controversy held justiciable involved the duty of an insurer (plaintiff) to pay disability benefits to an insured who had filed a disability claim but who had failed to bring suit. In the *Maryland Casualty* case, *supra*, the controversy held justiciable was whether an insurer was obliged to indemnify an insured, or submit to supplemental proceedings brought by his judgment creditor, for a claim on which the insured's adversary had filed suit but not yet obtained judgment. If such controversies are "real" and "concrete," touching upon legal relationships, then here too such a controversy is presented, where petitioners and respond-

ents bear the relationship of employees and employer and the latter asserts the power to wring from the former disclosures in violation of the Constitution under pain of immediate discharge. Apposite is *Perkins v. Elg*, 99 F. 2d 408, 413-4 (affd. 307 U. S. 325, 350), where the plaintiff, claiming citizenship in the face of the government's notification that she was considered an alien and order to leave the country, sought a declaration of her status and an injunction against deportation. The Court in that case stated at page 414:

> ". . . she is entitled to a declaration of her political status for her rights as a citizen are valuable rights—certainly no less valuable than property rights,—and an actual and vital controversy exists between her and the government in relation to them. The right to be immune from threats of deportation and from the declarations of public officials that she is an alien and subject to arrest is, we think, a right . . . entitling Miss Elg to prosecute this suit."

So here petitioners have valuable personal rights to political freedom—to be fullfledged, not second-class, citizens—in addition to their jobs which are now in jeopardy by the requirements of the Loyalty Order and the County's threatened discharge action. The jeopardy is real and immediate. Plaintiffs have a right to a declaration.

The decisions of this Court in *Alabama State Federation of Labor v. McAdory*, 325 U. S. 450, and *United Public Workers v. Mitchell*, 330 U. S. 75, are not contrary to petitioners' position here. In the *McAdory* case this Court was called upon to declare the rights of certain labor organizations and the members thereof under a "comprehensive" state statute regulating unions and lay-

ing down certain conditions upon their "functioning" in the state. The petitioners there asserted that the statute in effect required a license as a condition to the exercise by unions and their members of the freedoms of speech and assembly. This Court observed there that while the "functioning" of labor organizations which was restrained and regulated by the statute might well be construed to include exercises of freedom of speech or assembly it was also possible it might be limited exclusively to such "business activities" as the petitioners there conceded and this Court assumed the state might properly regulate. Since neither the facts in the record nor the prior construction of the statute by the Alabama court had shown an actual or threatened application of the statute to labor union "functioning" other than such as involved "business activities" alone, this Court concluded no question of restraint upon speech and assembly was actually presented. It was therefore held that the Court had no issue to decide and could frame no decree defining the parties' rights.

> ". . . We are thus invited to pass upon the constitutional validity of a state statute which has not yet been applied or threatened to be applied by the state courts to petitioners or others in the manner anticipated. Lacking any authoritative construction of the statute by the state courts, without which no constitutional question arises, and lacking the authority to give such a controlling construction ourselves, and with a record which presents no concrete set of facts to which the statute is to be applied, the case is plainly not one to be disposed of by the declaratory judgment procedure."
>
> *Alabama State Federation of Labor v. McAdory*, 325 U. S. 450, 460-61.

The *Mitchell* case, *supra*, presented a similar problem. In the face of a general statutory prohibition against taking "any active part in political management or political campaigns" appellants there asserted a desire to engage in "activities on behalf of those candidates for public office who I believe will best serve the interests of this country" through certain methods generally described.[5] No actual or threatened interference with appellants' desires or activities was alleged or proven. The issues tendered were the appellants' generalized desires against the naked, unimplemented statutory prohibition. The Court was not presented with a specification of either the desired activities of appellants or the actual or threatened interferences therewith. It could determine neither whether constitutional rights had been, or were about to be, abridged nor how to frame an effective judgment.

Central to the Court's position in both cases is that the judicial function cannot be performed except with reference to precise issues. It could not determine whether Alabama's regulatory scheme for labor unions so interfered with the "functioning" of a labor union as to abridge free speech and assembly without knowing pre-

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[5]Significantly the methods described in appellants' affidavits (330 U. S. at p. 87, note 18) did not indicate whether they were or would be those which might be termed "partisan political activities" of the kind the Court held permissibly prohibitable in the case of Poole (330 U. S. pp. 100 *et seq.*).

cisely what particular regulation was in issue, how it had been, or was threatened to be, applied, and upon what "function" of the union it had been or was about to be brought to bear. In the *Mitchell* case the statute's broad prohibition was not juxtaposed with concrete activity nor with a specification of planned activity which the agency enforcing the statute had threatened to punish. The things the appellants said they wanted to do may or may not have been the kind of "partisan political activity" which the Court held the statute covered in *Poole's* case.

Neither of these decisions was predicated upon situations apposite to the case at bar. Here we have a command narrowly drawn and applicable to all alike. The County's Loyalty Order requires of each employee the same, single act of signing an affidavit and this requirement is operative to each individual irrespective of his particular situation. The consequences of non-compliance are the same for all. The required disclosure is an infringement of freedom of opinion and affiliation for all or for none and for the same reasons. There can be no situation in which the Loyalty Order in the respects here under attack operates differently for some or has varying consequences some of which might be permissible while others not. The threat of enforcement *for all* has been in effect, "Sign or else—." The Order and the threatened enforcement are either an infringement of constitutional guarantees or they are not. The judicial function can be exercised fully and completely by a determination that the

required disclosure can be enforced or can not. Hence there is in every sense a justiciable case and controversy.*

IV.

Conclusion.

Wherefore, the petition should be considered and adjudicated upon the merits.

Respectfully submitted,

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*One particular observation apropos the *Steiner* case, No. 712, is in order. With reference to that case, respondents have gone outside the record before this Court to make a claim that petitioner Steiner is no longer a County employee. They make reference to an Exhibit "A" which refers to a purported resignation. However, the resignation itself is not set forth nor is it shown that, if made, it was accepted.

Respondents have filed no Suggestion of Abatement or Mootness supported by proper affidavit. Accordingly this Court cannot speculate as to matters outside the record.

But in any event, the suit is a representative suit and those on whose behalf it is brought are equally parties before this Court and entitled to an adjudication of their rights. This is the rule both under California law (*Spellacy v. Superior Court*, 23 Cal. App. 2d 142; *Whitten v. Dabney*, 171 Cal. 621), and under the law of this Court. (*Cf. Walling v. James V. Reuter, Inc.*, 322 U. S. 674.)

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IN THE

Supreme Court of the United States

October Term, 1949

No. 49

HELEN PARKER, IONE LANE WHEELER, KATHERINE GATES, CORNELIUS WEBSTER, WILLIAM G. COLE, J. L. MARTIN, ROBERT L. McGUIRE, JULLEANA GLISBY, ALICE M. PARSONS, CAROLINE POTTENGER, JOHN R. McCROSKEY, MATTIE A. BELINO, ADA GRUVER, MAJOR WEST, ALICE WALSH, C. H. DEMAREST, BETTY S. SELDEN, MIRIAM LASAROU, RALPH L. DAVIS, WINIFRED McCONNELL, COLUMBUS S. BELL, SHIRLEY GALAT, RUTH THOMASEN, KENT HAMMOND THIES, LAWRENCE LUCKS,

Petitioners,

vs.

COUNTY OF LOS ANGELES; WILLIAM A. SMITH, LEONARD J. ROACH, JOHN ANSON FORD, RAYMOND V. DARBY and ROGER W. JESSUP, and Each of Them as Members of the Board of Supervisors of Said County; WAYNE ALLEN, as Chief Administrative Officer of Said County; HAROLD W. KENNEDY, as County Counsel of Said County; CHARLES C. MACK, G. H. NEWLAND and T. J. O'KEEFE, and Each of Them, as Members of the Civil Service Commission of Said County; CLIFFORD AMSDEN, as Secretary and Chief Examiner of Said Commission; MICHAEL DONOGHUE, as Registrar of Voters of Said County,

Respondents.

BRIEF FOR PETITIONERS.

On certiorari to the District Court of Appeal, Second Appellate District, of the State of California to review the decision of that Court rendered November 12, 1948 (P.

47)* affirming the judgment of the Superior Court of the State of California, in and for the County of Los Angeles, entered March 9, 1948 (P. 34) dismissing petitioners' action following the entry of an order on March 5, 1948 (P. 34) sustaining respondents' demurrer to petitioners' amended complaint without leave to amend. The Supreme Court of California denied a hearing (P. 76).

Opinions Below

The opinion of the Superior Court (P. 35) is not reported. The opinion of the District Court of Appeal (P. 47) is reported in 88 Cal. App. 2d 481. The Supreme Court of California rendered no opinion upon its denial of a hearing (P. 76).

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3) and 2101 (c). This Court granted certiorari June 13, 1949.

The judgment of the District Court of Appeal was entered November 12, 1948 (P. 47, 63). The order of the Supreme Court of California denying a hearing was entered January 10, 1949 (P. 76).

The constitutional issues here presented were urged in the trial court (P. 8-16), considered by it (P. 39) where they were overruled (P. 39-43, 34); they were urged before and considered by the District Court of Appeal (P. 49, 60-61) where they were also overruled (P. 56, 57-63); and they were urged before the Supreme Court of California (P. 69-74) which Court declined to grant a hearing thereon, one Justice voting in favor of granting such a hearing (P. 76).

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*References to the record will be preceded by the letter "P", signifying the printed record filed in this case. This is a companion case to *Steiner vs. County of Los Angeles, et al*, October Term, 1949, No. 50. A joint Petition for Writs of Certiorari was filed in both cases. The parties now submit their respective causes upon separate briefs and argument.

State Action Involved

The issues presented in this case arise out of an order adopted by the Los Angeles County Board of Supervisors on August 26, 1947 (hereinafter called the Loyalty Order), requiring *inter alia* execution by all County employees, as a condtion of continued employment, of an Oath and Affidavit in the form set forth in said Loyalty Order. The Loyalty Order appears in the Record at P. 16-25, and the Oath and Affidavit at P. 19-25.

Statement

Facts—There are no disputed issues of fact, the trial court having sustained the respondents' demurrer (P. 25) to petitioners' amended complaint (P. 1) without leave to amend (P. 34). Accordingly, the facts before this Court are found in the amended complaint and in the Loyalty Order attached thereto as Exhibit "A" (P. 16-25) which is incorporated in and made a part of the complaint (P. 5, par V). The facts, as framed by the complaint and demurrer, are as follows:

Petitioners are citizens of the United States (P. 2-3) and permanent civil service employees of the respondent Los Angeles County (P. 2-3). Said County employs approximately 20,000 like persons (P. 3).

Respondent Los Angeles County is a political subdivision of the State of California (P. 3), and the individual respondents are certain elected or appointed officers of the County (P. 3-4), including the elected members of the County Board of Supervisors (P. 3).

On April 1, 1947 the respondent members of the County Board of Supervisors directed the respondent County Chief Administrative Officer and the County Counsel to study, prepare and recommend ways and means of making an investigation "to determine whether or not there are any Communists, avowed or otherwise . . . employed by the County" (P. 4, par. IV; P. 16).

On August 15, 1947 these two respondents presented in writing to the Board of Supervisors a program of investigation which they recommended (P. 5, 16).

On August 26, 1947 the Board of Supervisors by its order adopted the said recommendations without change and ordered them put into operation (P. 5). It is this order which has been designated above as the Loyalty Order.

Under the Loyalty Order the respondent County Board of Supervisors directed and required a committee composed of the respondents County Chief Administrative Officer, County Sheriff, Secretary of the County Civil Service Commission and the County Counsel to institute and administer a program for the investigation of the loyalty of all County employees (P. 16-17), and report to the respondent Board of Supervisors "if any known subversively inclined persons are located with a recommendation by the committee in connection with each particular person in question" (P. 18, par. 8).

The provisions of the Loyalty Order "require" all County "officers and employees to execute" the Oath and Affidavit heretofore identified (P. 17, par. 5).

By paragraph "D" of the compulsory Oath and Affidavit petitioners and all other County employees are required to disclose whether they have ever "been a member of, or directly or indirectly supported or followed" (P. 20) any of the 144 named organizations and two named publications. The scope of the disclosure thus required is revealed by an examination of the listed organizations and publications which include among others the following (P. 20-25):

Named Publications; e.g.:

Daily Worker

New Masses

Named Veterans' Organizations; e.g.:
American Veterans Committee

Named Religious Organizations; e.g.:
Humanist Society of Friends

Named Labor Unions; e.g.
American Communications Association
Federation of Architects, Engineers, Chemists and Technicians
United Federal Workers
Workers Alliance
Marine Cooks and Stewards

Named Political Organizations; e.g.:
American Communist Party
Farmer Labor Party
Hollywood Independent Citizens Committee for Arts, Sciences and Professions
National Citizens Political Action Committee

Named Organizations Dealing with Foreign Affairs; e.g.:
American Committee for a Free Indonesia
Committee for Boycott Against Japanese Aggression
League Against War and Fascism
American Russian Institute
Anti-Nazi League
Joint Anti-Fascist Refugee Committee

Named Organizations Dealing with Civil Rights and Discrimination; e.g.:
American Committee for the Protection of the Foreign Born
Bay Area Council Against Discrimination
Civil Rights Congress
International Labor Defense
National Negro Council
National Federation for Constitutional Liberties

Named Organizations Dealing with Civic Affairs; e.g.:

Hold the Price Line Committee
League of Women Shoppers
Citizens Committee for Better Education

Named Schools; e.g.:

California Labor School
Communist Workers School

The organizations listed in paragraph "D" are described in the Loyalty Order as ones "known to be subversive or Communistic" or ones which "might have come under some subversive or Communistic influence" (P. 18, first paragraph).

Under paragraph "B" of the compulsory Oath and Affidavit petitioners and all other County employees are required to disclose whether they are now advocates of, or are now members of or have ever since December 7, 1941 been members of, "any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles, by force and violence" (P. 19, par. "B").

Petitioners in their amended complaint sought an injunction prohibiting the respondent County and the several respondent officers thereof from requiring petitioners to execute the Oath and Affidavit and for declaratory relief* (P. 14-16). Petitioners sought the injunction and the declaratory judgment on the ground that the disclosures required by the Loyalty Order were contrary to the First and Fourteenth Amendments to the Constitution of the United States (P. 8, par. XII). As above stated, the trial court sustained the demurrer to the amended complaint without leave to amend (P. 34) and the court below affirmed (P. 47).

*Petitioners have not raised here denial below of relief against other aspects of the Loyalty Order.

Decisions Below—The Superior Court considered and rejected petitioners' claims that paragraphs "D" and "B" of the Oath and Affidavit violated their rights under "the provisions of the First and Fourteenth Amendments of the Federal Constitution" (P. 39, 43). That court relied on *United Public Workers v. Mitchell*, 330 U.S. 75, declaring that that decision had "answered these identical contentions" and had held adversely to them (P. 41).

The District Court of Appeal similarly considered and rejected petitioners' claims saying "there is nothing in the Oath or Affidavit which requires plaintiffs to surrender any constitutional right". (P. 56). It declared, "The mere asking of the question [as to whether petitioners could be compelled to make the disclosures required by the Loyalty Order] points unerringly to the answer any *loyal, sane* citizen of the United States of America would give to it. It is an unequivocal 'yes' ". (P. 49). The court supported its decision by stating that whenever a person accepts government employment "he impliedly surrenders certain natural rights which would remain his if he were a private citizen only just the same as he would surrender certain privileges if he were to enter private employment" (P. 51-52). And further that, since the Government of the United States had the right to draft persons for military service which may result in his loss of life, "any state in attempting to perpetuate its loyalty to the union has the unquestioned right and duty to exact from its citizens adherence to *all* lesser measures which have for their purpose the preservation of our form of government and the repression of its enemies". (P. 51). (Italics added.) The court concluded its opinion by adopting the opinion of the Superior Court. (P. 57).

Questions Presented

(1) Whether, on its face or as applied in this case, paragraph "D" of the Oath and Affidavit, prescribed in the Loyalty Order, which compels all county employees to disclose their membership in or direct or indirect support or following of any of 144 named organizations and two named publications deprives petitioners of the liberties of freedom of speech, press, religion, thought, association and assembly without due process of law in violation of the First and Fourteenth Amendments to the Constitution.

(2) Whether, on its face or as applied in this case, paragraph "B" of the Oath and Affidavit, prescribed in the Loyalty Order, similarly deprives petitioners of those liberties and rights without due process of law in violation of those amendments.

Summary of Argument

In the "Introduction: Statement of Premises" of this brief petitioners urge that the disclosures required under the Loyalty Order are directed at the exercise of at least these liberties protected by the First and Fourteenth Amendments: (a) freedom of opinion, since membership in or support or following of an organization imports acceptance of some or all of its program; (b) freedom of speech, since such a connection with an organization imports propagation of its cause; (c) freedom of assembly, since associations formed to propagate causes constitute a projection of the right of assembly; and (d) freedom of petition, in many instances, since it is often the function of associations formed around causes to appeal to government for redress of conceived grievances. It is further urged in the Introduction that the exercise of these liberties is of paramount importance to the continued vitality of free and representative government because they constitute the means whereby the people, as the ultimate repository of sovereignty, resolve their choice of men and

measures. The fullest freedom in the exercise of the liberties above described deserves the protetion of this Court not in the enforcement of private rights but in the safeguarding of our form of government.

Upon these premises petitioners urge that these liberties are offended here for the following reasons:

1. To the extent that the compulsory disclosures required by paragraph "D" of the Loyalty Order are directed at the holding or not holding by petitioners of opinions on the subjects indicated by the organizations enumerated therein, the Loyalty Order is void in principle as an inquisition into the citizen's opinions. Similarly, to the extent that such disclosures are directed simply at the advocacy of such causes, the Loyalty Order is void in principle as an inquisition into the exercise by the citizen of the freedoms of speech, assembly and association. It is such an inquiry because it is not predicated upon any of the exceptions to the operation of the First Amendment recognized by this Court, to-wit: defamation, obscenity, "fighting words", conduct defined under the clear and present danger rule, or matters of "time, place or manner".

2. If enforced, the compulsory disclosures prescribed in paragraph "D" of the Loyalty Order would coerce petitioners' freedom of choice respecting the opinions and causes indicated by the organizations enumerated therein by constraining them not to entertain or advocate those opinions and causes. This coercion would stem first from the fact that the County, as their employer, is positioned to visit economic reprisal upon petitioners in the event that it should disapprove of their disclosures, and second, because of the overhanging threat that the County will reveal publicly petitioners' disclosures under paragraph "D". The potential for coercion in each of these instances is aggravated by the fact that the County in the Loyalty Order has shown its hostility toward the organizations

listed by characterizing them as ones which are "subversive or Communistic" or ones which "might have come under some subversive or Communistic influence". This coercion, operating upon petitioners' freedom of choice as above stated, is an instrument for censorship of the content of petitioners' opinions and advocacy, similar to other instruments of censorship such as taxation, licensing and picketing statutes condemned by this Court. Were petitioners to be required to answer paragraph "D", the censorship would be effected as much, if not more, by the persuasive threat residing in the coercion above described as by the infliction of reprisal in specific cases.

3. The compulsory disclosures prescribed in paragraph "B" of the Loyalty Order invade petitioners' First Amendment liberties in similar respects and for similar reasons as those prescribed in paragraph "D". The inquiry as to advocacy of the overthrow of government by force and violence is not limited to advocacy under any specific set of facts or circumstances identifying it as conduct within the meaning of the clear and present danger rule. Absent these limitations, the inquiry is directed at speech protected by the First Amendment. So drawn it is void.

4. The compulsory disclosures prescribed by the Loyalty Order are not within the power of government simply because directed at public employees. The court below misconceived this Court's ruling in *United Public Workers v. Mitchell*, 330 U.S. 75, wherein this Court indicated that government regulation of its employees could not discriminate among employees on grounds of their opinions, advocacy or affiliation any more than it could on grounds of their race or color. By selecting the ideas, advocacy and association identified with only certain organizations as listed in paragraph "D", the Loyalty Order violates the principle enunciated by this Court in the *Mitchell* case. The standards of the Loyalty Order define no ob-

jective for County action in any way related to promoting the efficiency of the County Civil Service. These standards are loosely drawn and bereft of ascertainable meaning, thus permitting the County to abridge the constitutional freedoms heretofore set forth.

Introduction: Statement of Premises.

The constitutional validity of the Los Angeles County Loyalty Order turns upon the power of the County government to compel the disclosures briefly described in the Statement of Facts, *ante*, pp. 4-6. The validity of such a requirement can be examined, we submit, only with reference to certain basic assumptions dictated by the realities of human relationships in a democratic society and the nature of representative government. These are, *first*, that the inquiry into organizational connections prescribed in the County Loyalty Order is in fact a demand that the citizen render an accounting of his exercise of virtually the whole congeries of First Amendment liberties including particularly thought, speech and association, and, *second*, that the First Amendment liberties are primarily to be viewed as safeguards ensuring the fullest possible freedom to citizens in the performance of their sovereign functions in a free and responsible government.

A. The Compulsory Disclosures Commanded by the County Loyalty Order Are Specifically Directed at Petitioners' Exercise of the First Amendment Liberties.

By the oath and affidavit requirement of the Loyalty Order, the State of California, through its subdivision, the County of Los Angeles, has asserted the power to exact of petitioners and their 20,000 fellow employees an accounting under oath as to the manner in which they have exercised the innate liberties of a self-governing

people. It commands them to reveal, on pain of loss of employment, membership in or direct or indirect support or following of any of 144 named organizations and two named publications, along with membership in any political party or organization advocating the overthrow of government by force or violence. The disclosures thus compelled probe not simply into the exercise of the freedom of speech, but beyond that into the inner recesses of the citizen's convictions as well as into his association with his fellows in the advancement of his opinions.

The question, Have you ever been a member of or directly or indirectly supported or followed the "X" organization, is a searching probe into virtually the entire galaxy of liberties protected by the First Amendment. Membership in an organization imports an exercise of at least three, and in some instances a fourth, of these guarantees. First of all, it reflects acceptance of so much of the organization's program as to lead to participation in its affairs on a regularized basis. Thus the person who has become a member has by some process of ratiocination examined a set of ideas and to a greater or lesser extent accepted them as his own. He has exercised that First Amendment liberty which underlies all others and gives them direction and meaningful substance—freedom of thought or opinion. The question, Have you ever been a *member*, then, calls upon him who is interrogated to disclose his opinions past or present or both.[1]

Membership in an organization, further reflects an effort by the individual to express his opinions. The views

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[1]As was indicated in the Statement of Facts, *ante*, pp. 4-6, the opinions sought to be disclosed by the County Loyalty Order cover a wide range of human interest including religion, trade unions, politics, foreign affairs, racial discrimination, civil rights, and education.

of individuals normally have societal significance when they are expressed through association with others; they affect the processes of government when these organizations are sufficiently large and the dissemination of their programs sufficiently broad to be reflected in the votes of electors and their choice of representatives and measures. Organization of citizens around ideas, then, is but the effective exercise of the freedom of expression whether by speech or press, in their broadest sense, or both.

Membership in an organization, moreover, is but an exercise of the freedom of assembly and an extension of it to societal and governmental use. People assemble for the discussion of men or measures and this leads to the acceptance or rejection of ideas; the adoption of a program, whether it has the formal attributes of a Declaration of Rights or the informal aspect of a parent-teachers club. But this assembly and the program it evolves looks forward to efforts to advance and effectuate the views adopted. To this end some form of continuation organization is created. Again, this may have the complex form of a political party or a loose association subject merely to further call of an elected chairman. In any event it is a concretising of the temporary assembly for purposes of projecting its work into future efforts at dissemination of views and program. Association is simply assembly on a long term basis. Opposition to slavery, for example, was but a noble concept resting upon principles of human dignity and racial justice until the association of persons into the American Anti-Slavery Society led to an organization that swept the country carrying its message to every corner of the North and gathering to itself such large numbers of people that it became an identifiable

force in political parties, elected representatives to office and profoundly affected both the executive and legislative policies of the Lincoln, Johnson and Grant administrations. Significantly this association of individuals and the program it advanced has left an indelible mark upon American government and society in the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution.

Finally membership in an organization may well reflect an exercise of the right of petition. True it is not every organization that transmits its views to legislative bodies or executive officials. But in these days of complex social organization and extensively ramified government, both producing a situation wherein political parties do not and often cannot prepare a program sufficient to meet all needs of the period between elections many organizations convey the criticisms and aspirations of people to their representatives at all levels of government. In this they perform an important function in preserving the vitality of representative government. That many organizations do provide this link between citizen and government—and all may—demonstrates the importance of organized governmental interference with the freedom of citizens to associate.

Grave as such official thrusts at the exercise of democratic liberties are seen to be, the question, Have you ever directly or indirectly supported or followed "X" organization, effects a much deeper and more searching dissection of the processes protected by the First Amendment. The words "directly or indirectly supported or followed" defy precise definition. But in their very ambiguity they reach an important fact of political life in a democratic society. Political and other movements often attract in various degrees far more people than become full members. Millions

more voted for Franklin Roosevelt than those who registered as Democrats or became active participants in the party organization. Most movements framed to influence public opinion draw within their orbit those who act with it on single or separate issues, or who attend occasional meetings, or who donate money to some special campaign or effort, or who subscribe to its publications, or who advocate some or all of its program without ever taking out formal membership. In short, around most organizations there is a peripheral group, ever varying in numbers and interest which has assumed none of the obligations of membership but which on all or part of the organization's program, moves, albeit unevenly, in the same general direction as the organization itself. For the most part such peripheral adherents represent those whose thinking has not yet proceeded to settled views inducing them to make the programmatic commitments of membership. They are an inchoate ideological force still in the process of development.

The question designed to elicit direct or indirect support or following is directed to the disclosure of such adherence. It is calculated to reveal a tendency to move in a certain political or idealogical direction, a sensitivity to certain ideas, a willingness to take at least the first halting steps toward an integrated or comprehensive political program.

Here then the question is directed to the very intellectual processes upon which the exercise of all First Amendment liberties rests. The scalpel of the interrogator seeks to lay bare, not the structure of the citizen's philosophy, but the very nerve impulses as they activate his thought in the reach for any philosophy at all.

B. The Compulsory Disclosures Commanded by the County Loyalty Order Intrude Upon Petitioners' Exercise of the First Amendment Liberties as Governmental Functions of the People in a Self-Governing Society Which It Is the Purpose of the First and Fourteenth Amendments to Safeguard From Interference by the State.

The significance of the First and Fourteenth Amendments to the case at bar is their purpose to vouchsafe to the people their sovereignty over the state. We are concerned here not with private rights but with the safeguard of representative government. The very political system created by the Constitution can function only when the people are free to hold such opinions as reason and discussion show to be valid and to express individually and through association with like-minded persons the views they deem worthy of propagation and effectuation—only when they are relieved of all restraint in the intellectual processes of political speculation and the societal process of exchanging ideas. The liberties defined in these amendments are those "indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern . . . society" (*Thornhill v. Alabama*, 310 U. S. 88, 103).

The sovereignty of the people in the American system of government has long been recognized by this court. Government both state and national was created by the people who delegated such powers as they deemed necessary to the federal government and others to the state governments, subordinated where appropriate the powers of the states to those of the nation and reserved to themselves "those sovereign authorities which they might not choose to delegate to either" (*Martin v. Hunter's Lessee*, 1 Wheat. 304, 324-325; *M'Culloch v. Maryland*, 4 Wheat.

316, 404-405).[2] The people are the "ultimate tribunal" to which, in the end, is the only appeal from the administration of government, and they may exercise their judgment "either in the pressure of opinion or by means of the suffrage" (*Yick Wo v. Hopkins*, 118 U. S. 356, 370).[3]

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[2]In assailing the Alien and Sedition Laws, Madison delineated the relationship of state and people in American representative government. Designed to choke off popular expression of the "alien isms" derived from the French Revolution, the Alien and Sedition laws provided a setting for Madison's exposition that gives it peculiar aptness to the current loyalty order programs designed to ferret out even thought about another ideology, also called alien:

> "The authority of constitutions over governments, and of the sovereignty of the people over constitutions, are truths which are at all times necessary to be kept in mind; and at no time like the present."—Madison's Report on the Virginia Resolutions, 4 Elliot's Debates, p. 550.
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> "The people, not the government, possess the absolute sovereignty. The legislature, no less than the executive, is under limitation of power. . . . the great and essential rights of the people are secured, not by laws paramount to prerogative, but by constitutions paramount to laws."—*Idem.*, p. 569.

Jefferson expressed it thus: "I know no safe depository of the ultimate powers of society but the people themselves . . ." Letter to William Charles Jarvis, September 8, 1820, Works Mem. Ed., Vol. 15, p. 278.

[3]"Let it be recollected, lastly, that the right of electing members of the government constitutes more particularly the essence of a free and responsible government. The value and efficacy of this right depends on the knowledge and comparative merits and demerits of the candidates for public trust and on the equal freedom, consequently, of examining and discussing the merits and demerits of the candidates respectively."—Madison, Report on the Virginia Resolutions, 4 Elliot's Debates, p. 575.

In his letter to Elbridge Gerry, January 27, 1799, Jefferson described as "violations of the Constitution" governmental attempts "to silence by force and not by reason the complaints or criticisms, just or unjust, of our citizens against the conduct of their agent" (Works, Memorial Ed., Vol. 10, p. 78). Jefferson's letter to Colonel Edward Carrington, January 16, 1787, expounded a similar concept of the government's subordination to popular will and the necessity for full discussion and exchange of ideas. ". . . the basis of our governments being the opinion of the people, the very first object should be to keep that right [*i.e.*, free press]; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter" (Works, Memorial Ed., Vol. 6, p. 57).

". . . There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority."—*West Virginia Board of Education v. Barnette*, 319 U. S. 624, 641.

The First and Fourteenth Amendments lay a specific prohibition against governmental action, federal or state, which is designed or calculated to influence the consent of the people by repressing ideas or abridging their dissemination. The freedoms thereby enunciated extend to "all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period" (*Thornhill v. Alabama* 310 U. S. 88, 102; see also *Grosjean v. American Press Company*, 297 U. S. 233, 249-250; Brandeis, J., concurring, *Whitney v. California*, 274 U. S. 357, 375-376). So completely dependent is free government upon free discussion that the amendments protect even speech which "induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger" (*Terminiello v. City of Chicago*, 93 L. Ed. (Adv. Op.) 865, 868). In a free society there is no "watchman for truth" other than the people themselves; public authority is "foreclosed" from interference by regulation or prohibition either of speaker or his message (Mr. Justice Jackson concurring, *Thomas v. Collins*, 323 U. S. 516, 545-546).

The scope of the limitation upon government in the interest of the people's sovereignty effected by the First and Fourteenth Amendments has no mere abstract significance. It does not guarantee talk for its own sake. Rather

is it the means of preserving free government as we know it. Full freedom of thought and expression are conceived as the channels through which representative democracy can remain a vital force moving in the direction of needed change and ever greater human emancipation. To restrict such expression is to encourage "incitements to the overthrow of our institutions by force and violence." (*De Jonge v. Oregon*, 299 U. S. 353, 365; *Stromberg v. California*, 283 U. S. 359, 369; Brandeis, J., concurring, *Whitney v. California*, 274 U. S. 357, 375.)

The significance therefore of the County Loyalty Order is not only that it asserts a power denied to government. For all the reasons set out here and in the subdivisions below it asserts a power that is destructive of government as we know it. It is a bold reach by officialdom for the means of its own perpetuation. It is infected with the disease of the *status quo*, a form of political arthritis that atrophies every process whereby the state may adapt to the irrepressible necessities of social change.

POINT ONE

The Requirement of Paragraph "D" of the Oath and Affidavit Prescribed by the County Loyalty Order That Petitioners Disclose to the State Their Past or Present Membership in, or Direct or Indirect Support or Following of, 144 Named Organizations and Two Named Publications Is Void as a Matter of Principle in That It Exceeds the Powers of Government as Limited by the First and Fourteenth Amendments to the Constitution of the United States.

A. To the Extent That the Compulsory Disclosures Commanded by the County Loyalty Order Are Directed at the Exposure of Petitioners' OPINIONS as Such, They Are Beyond the Power of the State to Enforce and Destructive of Representative Government.

The lessons of history, as well as principle, demonstrate that, however men manifest their opinions, the opinions themselves are beyond the reach of the state. The struggle in America for what James Madison described as "free and responsible government,"[4] has always found its pivotal point in the effort to emancipate the minds of men in religious and secular matters from governmental control. Historically in America freedom of religious opinion and freedom of lay opinion have been integrated as a single concept, freedom of the mind, and as such has been the touchstone of civil liberty and democratic government. In the colonial period freedom of conscience was inseparable from political liberty[5] and the fight for

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[4]Report on the Virginia Resolutions, *supra*, Note 3.

[5]Up to the revolution all colonies except Rhode Island had some form of state interference with religious freedom, ranging from laws dealing with religious worship and heresy to established churches. Foote, *Thomas Jefferson, Champion of Religious Freedom* (Boston, 1947), pp. 25-30.

either necessarily involved both. Roger Williams' refusal to take the Oath of Fidelity was based upon the grounds that it required him to acknowledge the authority of the colonial government to prescribe religious orthodoxy, punish failure to comply with requirements of public worship and limit suffrage to church members.[6] Before Ann Hutchinson was banished she was first convicted, not of heresy, but of promoting opposition to the established oligarchy of churchmen. Her "crime" was having joined a "faction," critical of the teachings of the dominant ministers, which had threatened the political position of those in power and had presented a petition to the General Court on freedom of religion. This crime was denominated "dishonoring parents," and it was for this she was ordered banished before she was so much as charged with heresy.[7]

The American Revolution gave impetus to the concept that in matters of opinion man is answerable to no one and that the state is wholly without power to intrude. Madison wrote, ". . . the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men."[8] The reason for the lack of jurisdiction in the state to act at all in

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[6]Ernst, *Roger Williams, New England Firebrand* (New York, 1932), pp. 95-123; Brockunier, *The Irrepressible Democrat, Roger Williams* (New York, 1940), pp. 54-64.

[7]Mrs. Hutchinson's "faction" has been described as a "political party," and it had already deposed the colonial governor supported by the clerical oligarchy. Its criticisms of religious doctrines led to issues of political control reaching to the very foundations of the colonial government. The signers of the petition were later convicted of "seditious libel." See Adams, *Emancipation of Massachusetts* (New York, 1919), pp. 216-265; Howe, *The Puritan Republic* (Indianapolis, 1899), Chapter 10.

[8]"Memorial and Remonstrance Against Religious Assessments." II Writings of Madison, pp. 183 ff., set forth in full as an Appendix to the dissenting opinion in *Everson v. Board of Education*, 330 U. S. 1, 63 ff.

the area of conscience is found in the nature of representative government; when the Government exerts power here the sovereignty of the people is *pro tanto* destroyed:

> "Because if religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and vicegerents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the coordinate departments, more necessarily is it limited with regard to the constituents. The preservation of a free government requires not merely, that the metes and bounds which separate each department of power may be invariably maintained; but more especially, that neither of them be suffered to overleap the great Barrier which defends the rights of the people. The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The people who submit to it are governed by laws made neither by themselves, nor by an authority derived from them, and are slaves."
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> Madison's Memorial and Remonstrance, *supra*, quoted in 330 U. S. at p. 65.[9]

In his reply to the Danbury Baptist Association, Jefferson, then President, stated:

> "Believing with you that religion is a matter which lies solely between man and his God: that he

[9]Jefferson expressed the same concept in the preamble of his bill for establishing religious freedom. ". . . the opinions of men are not the object of civil government nor under its jurisdiction; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill-tendency is a dangerous fallacy which at once destroys all religious liberty . . . that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts. . . ." (Works, Mem. Ed., Vol. 2, pp. 300-303).

> owes account to none other for his faith or his worship; that the legislative powers of the Government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their Legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof' . . . ."[10]

Concerning these words this Court has said:

> ". . . . Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured. Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order."
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> *Reynolds v. United States*, 98 U. S. 145, 164.

Jefferson, during his presidency, asserted that the constitutional deprivation of all governmental power over opinion included the principle that the government had no "right of inquiry into the religious opinions of others." (Letter to Edward Dowse, 1803. Works. Mem. Ed., Vol. 10, p. 378.)[11]

To Jefferson, as to Madison, the protection afforded by the First Amendment to freedom of conscience in religious matters extended to secular matters as well, so as to defeat any power or jurisdiction whatsoever in the civil government:

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[10]Set out in the court's opinion in *Reynolds v. United States*, 98 U. S. 145, 164.

[11]See also letter to Dr. Benjamin Rush, April 21, 1803, Works, Mem. Ed., Vol 10, pp. 380-381; letter to Dr. Benjamin Rush, September 23, 1800, Works, Mem. Ed., Vol. 10, p. 175; letter to Mrs. M. Harrison Smith, August [illegible], 1816, Works, Mem. Ed., Vol. 15, p. 60.

". . . another and more special provision has been made by one of the amendments to the Constitution which expressly declares that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press,' thereby guarding in the same sentence, and under the same words, the freedom of religion, of speech, and of the press, insomuch that whatever violates either throws down the sanctuary which covers the others—and that libels, falsehoods, and defamation, equally with heresy and false religion, are withheld from the cognizance of federal tribunals . . ."[12]

Madison regarded "free and responsible government" so utterly dependent on free opinion and expression that he without reservation denied any power in government to censure the opinions and associations of men. In the Congressional debate on the censure of the "democratic societies" in the autumn of 1794[13] he delineated the subordination of government to the people to demonstrate that Congress was without power to pass the censure:

"When the people have formed a constitution, they retain those rights which they have not expressly delegated. It is a question whether what is thus retained can be legislated upon. *Opinions are not the*

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[12]Kentucky Resolutions of 1798 and 1799. 4 Elliot's Debates 540. The reference to "libels, falsehoods and defamation" is to the prohibitions in the Alien and Sedition Laws against publications and speech which were "false, scandalous and malicious . . . against the government of the United States . . . with an intent to defame . . ." (The text of this provision is set out in 4 Elliot's Debates p. 573.) The Resolutions were written in opposition to those acts.

In his First Inaugural Address Jefferson pleaded for the elimination of "political intolerance" equally with "religious intolerance" for the reason that both were destructive of free and representative government (Works, Mem. Ed., Vol. 3, pp. 318-9).

[13]See *infra*, pp. 30-31.

objects of legislation. You animadvert on the abuse of reserved rights. . . . It may extend to the liberty of speech, or of the press. . . . . *If we advert to the nature of Republican Government in general, we shall find that the censorial power is in the people over the government and not in the government over the people.*"[14] (Emphasis added.)

It is in the light of this history that this Court has held that political belief along with religious belief has an "absolute" protection from governmental interference because "essential to enlightened opinion and right conduct on the part of the citizens of a democracy" (*Cantwell v. Connecticut*, 310 U. S. 296, 304, 310).

The interrelation of the First Amendment guarantees was purposeful because history has demonstrated that without freedom of religious opinion there is no freedom of political opinion, as well as the converse, and both are essential to the maintenance of our representative government:

". . . . It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, *cf.* De Jonge v. Oregon, 299 U. S. 353, 364, 81 L. ed. 278, 283, 57 S. Ct. 255, and therefore are united in the First Articles assurance. *Cf.* 1 Annals of Congress 759, 760.

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[14]Ann. Cong., 3d Cong., 1st and 2d Sess., p. 934. Giles spoke in a similar vein, ". . . . the public have a right to censure us and we have *not* a right to censure them . . . . We are neither authorized by the Constitution, nor paid by the citizens of the United States for assuming the office of censorship" (Ann. Cong., *supra*, p. 917).

This conjunction of liberties is not peculiar to religious activity and institutions alone. *The first amendment gives freedom of mind the same security as freedom of conscience. Cf.* Pierce v. Society of Sisters, 268 U. S. 510, 69 L. ed. 1070, 45 S. Ct. 571, 39 A. L. R. 468; Meyer v. Nebraska, 262 U. S. 390, 67 L. ed. 1042, 43 S. Ct. 625, 29 A. L. R. 1446; Prince v. Massachusetts, 321 U. S. 158, 88 L. ed. 645, 64 S. Ct. 438. Great secular causes, with small ones, are guarded. The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and a free press are not confined to any field of human interest." (Emphasis added.)

Thomas v. Collins, 323 U. S. 516, 530-531.[15]

California's command that petitioners reveal their past or present membership in or direct or indirect support or following of named organizations and publications is patently designed to disclose their opinions in both religious[16] and secular fields. Even as to those who have had no connection with the organizations and publications the Loyalty Order requires a disclosure—that of negativing the opinions under inquiry. The investigation requires the petitioners to disclose beliefs or the absence of them, and, in either case, a state of mind. For that which is in

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[15]See also Mr. Justice Jackson's penetrating formulation: "The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us. . . . *As I read their intentions, this liberty was protected because they knew of no other way by which free men could conduct representative democracy.*" (Concurring opinion, *Thomas v. Collins,* 323 U. S. 545-546.) (Emphasis added.)

[16]The list of organizations in paragraph "D," it will be recalled, includes the Humanist Society of Friends.

their minds they are accountable to no one, the more especially not to government for the power in government to be the guardian of the citizen's mind has in these United States been irrevocably denied. While this Court sits "free and responsible government" cannot be undermined by official attrition of the consent upon which it rests.

B. To the Extent That the Compulsory Disclosures Commanded by the County Loyalty Order Are Directed at the Exposure of the ASSOCIATION of Petitioners for the Propagation of Opinions by Speech, Assembly and Petition, They Are Beyond the Power of the State to Enforce and Destructive of Representative Government.

Insofar as the County Loyalty Order requires the disclosure of the association of petitioners for the propagation of opinion, it is as void on principle as the requirement that petitioners disclose their opinions. The right to propagate opinion is as absolute as the right to hold opinion itself, save in limited exceptions none of which obtain here. Thus, the Loyalty Order is not an effort to redress private injury caused by defamation. It is not a regulation holding to account the user of "fighting words" or obscenity. (See *Chaplinsky v. New Hampshire*, 315 U. S. 568, 573.) Nor does it seek to prescribe the time, place or manner of the exercise of speech or assembly in the interests of ordered liberty. (See *Kovacs v. Cooper*, 93 L. Ed. (Adv. Op.) 379.) Finally the inquisition into expression in the manner prescribed here is in no sense an effort to reach to conduct of any kind. (See *Reynolds v. United States*, 98 U. S. 145; *Bridges v. California*, 314 U. S. 252, 263; *Thornhill v. Alabama*, 310 U. S. 88, 104-105.) In fine, the Loyalty Order is purposed to reveal the simple fact of expression, nothing more. Expression not

falling within the exceptions indicated above is as fully protected as opinion.

As was pointed out in the Introduction (*ante*, p. 11 ff) membership, or a more remote participation, in organizations formed for the propagation of ideas is but the exercise of freedom of speech. The essence of that liberty is propagation of opinion through any medium. It protects not only the individual speaker, whether on the soap box or at the lectern, but also the joint efforts of individuals to promote ideas and programs through association. In the political field especially has it been recognized that association is essential to the significant expression and dissemination of principles and position. It is the conduit to the effectuation of political program in both the electoral process itself as well as in the process of petition to representatives once elected. The right stems from the practices of history and the necessities of free men.

It is no exaggeration to say that American independence came into being through the propagandizing work of private individuals organized as the Committees of Correspondence. And it was this history that shaped the First Amendment as a limitation upon the power of government to interfere with such a method of free expression. An organizational form having its origin deep in colonial history,[17] the Committees of Correspondence became a "medium of self-expression and action,"[18] having the greatest

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[17]See *History of the State of New York* (Edited by A. C. Fleck, Columbia University Press, 1933), Vol. III, pp. 212-216; Leake, *The Virginia Committee System and the American Revolution* (John Hopkins University Studies in History and Political Science) *passim*; Collins, *Committees of Correspondence of the American Revolution* (Annual Report of the American Historical Association for 1901), Vol. I, *passim*.

[18]*History of the State of New York, supra*, p. 230; Davidson, *Propaganda and the American Revolution* (Univ. North Carolina Press, 1941), Chaps. 3 and 4; Van Tyne, *The American Revolution* (Vol. IX of *The American Nation: A History*, edited by A. E. Hart), pp. 21 ff.

importance in the moulding of the colonists' resistance to imperial encroachments upon representative government. Their purpose was epitomized in the words of Samuel Adams before the Boston Town Meeting in 1772, moving for the creation of the Boston Committee, "to state the rights of the Colonists, and of this Province in particular, as men and as Christians and as subjects; and to communicate and publish the same to the several towns and to the world, as the sense of this town, with the infringements and violations thereof that have been, or from time to time may be, made.[19] They formulated and mobilized opposition to the Stamp Act which imposed taxes by a legislative body in which the tax payers were not represented,[20] the decree fixing the salary of judges and providing the necessary revenue from a tax levied upon the colonists;[21] the importation of tea subject to duties levied from abroad.[22]

Moreover it was from within the committees that the idea of the Continental Congresses sprang, and they largely consisted of representatives selected through the local

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[19]Boston Town Records for November, 1772; Wells, *The Life and Public Services of Samuel Adams* (Little, Brown & Co., Boston, 1866), Vol. 1, pp. 485-497; Collins, *Committees of Correspondence of the American Revolution, supra*, pp. 247-249.

[20]*History of the State of New York, supra*, pp. 214-219. Of the work of the committees up to the repeal of the importation duties the author says:

> "They had created and organized popular sentiment, directing it against the objectionable measures of Parliament by newspaper publicity [i.e., in the form of letters to newspapers] and mass meetings. By correspondence they had kept in touch with the committees of other colonies for the promotion of concerted action in the common interest." (p. 219.)

[21]See note 19, *supra*.

[22]Wells, *supra*, Vol. 2, pp. 108-130, 156-196; *History of the State of New York, supra*, pp. 222-225; Collins, *supra*, pp. 258-259.

committees set up over all the colonies.[33] From local committees the message of representative government had been carried to all the land, and that which had been created as an organ for the transmission of information became the force that welded the entire American seaboard to the point where, acting in unison, it could declare itself an independent nation and create its own government on the principles urged from the beginning.

It is with an eye to such fruition of liberty by the association of free men to advance a cause that all government in the United States has submitted to the prohibitions of the First and Fourteenth Amendments.

The lessons of the revolution were not so dim in the memory of those who framed our Constitution that they purposed to vouchsafe free speech to the individual acting alone but not when acting collectively. In 1794 the Federalists in Congress attempted to have adopted a Congressional censure of the "democratic societies" which had sprung up preaching the egalitarian doctrines of the French Revolution and denouncing the courtly pretensions of the Federalist administration. In the House of Representatives Madison and Giles led the opposition to the Federalist censure and succeeded in having it defeated.

Madison argued that these societies represented merely the efforts of men to express and advance their views and that to censure them was to censure the freedom of speech and press; that "opinions are not the subject of legislation" and that the advocacy of the societies must be per-

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[33]Wells, *supra*, Vol. II, p. 91; *Collins, supra*, pp. 256-262; *History of the State of New York, supra*, pp. 228-231; Van Tyne, *The Causes of the War of Independence, supra*, pp. 427-428; McLaughlin, *A Constitutional History of the United States*, p. 83.

mitted to "stand or fall by public opinion."[24] Giles held that in opposing the censure of the societies he and Madison were opposing "the very first step made in America to curb public opinion."[25] All who participated in the debate conceded the right of citizens to form societies for the advancement of their views.[26]

The story of the Abolitionists marks out with awesome vividness the content of the First Amendment guarantees as well as the consequences of ignoring them. The American Anti-Slavery Society, formed to attain the abolition of slavery "only through the power of the truth applied to the understanding and conscience of the slaveholders, to persuade them to do their duty,"[27] carried its message to the entire nation through the association of individuals for the propagation of an idea.

Southern efforts to silence the cause of the black man's freedom repressed anti-slavery societies, as well as all other forms of advocacy of emancipation below the Mason and

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[24]The censure was to be included in a message from the House to the President in reply to the latter's which had criticized the societies. Rives, *Life of Madison* (Boston, 1859), Vol. 3, pp. 464-469; Ann. Cong., 3d Cong., 1st and 2d Sess., 1793-1795, pp. 934-935.

[25]Ann. Cong., *supra*, p. 919. Jefferson, writing to Madison, commented, "It is wonderful indeed, that the President should have permitted himself to be the organ of such an attack on the freedom of discussion, the freedom of writing, printing, publishing . . ." (Letter to Madison December 28, 1794, Works, Memorial Ed., Vol. 9, p. 293.)

[26]As one of the proponents of the censure put it, "The right to form political clubs has been urged, as if it had been denied." Ann. Cong., *supra*, p. 922. See also, p. 906.

[27]Letter of James G. Birney, "A Vindication of Abolitionists," included in *A Collection of Valuable Documents* (Isaac Knapp Co., 1836).

Dixon line.[28] Legislation was offered in Congress at the instance of President Jackson in 1835[29] to deny the use of the mails for the circulation of abolitionist literature. It was defeated in the Senate, its opponents calling attention to the constitutional guarantees preventing a "gag in the mouths of our citizens" and forbidding that we "put down societies who meet" to discuss slavery. "Should Congress, by the exercise of its power attempt to prevent us from speaking, writing, printing, publishing and forming societies, for the exercise of all our moral powers in order to induce the members of our sister states to refrain from . . . [slavery] . . . ? . . . a plain exposition of . . . [this thesis] . . . is its best refutation."[30]

The legislatures of the Southern states, in the period 1835 to 1836, memorialized every Northern state urging the adoption of legislation to suppress the anti-slavery societies as well as forbidding the publication and dissemination of abolitionist literature.[31] Proposed legislation to

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[28]The suppression took the form of laws forbidding circulation of or subscription to Abolitionist literature, official as well as private offers of rewards on the heads of Abolitionist leaders, vigilante terror including lynchings, brandings, whippings and raids upon federal post offices for the removal and burning of Abolitionist literature, all tolerated by authorities. See Cutler, *Lynch Law: An Investigation into the History of Lynching in the United States* (New York, 1905), p. 124, and Chap. IV, *passim*; William Birney, *James G. Birney and His Times* (New York, 1890), pp. 184 ff.; *Third Annual Report of the American Anti-Slavery Society* (William S. Dorr & Co., 1836), pp. 42-46, 49; Goodell, *Slavery and Anti-Slavery* (New York, 1852), pp. 410-411; Wilson, *History of the Rise of the Slave Power in America* (New York, 7th Ed.), Vol. I, pp. 186 ff., 670.

[29]*Congressional Globe*, 24th Cong., 1st Sess., p. 10.

[30]Remarks of Senator Thomas Morris (Ohio), April 14, 1836, *Congressional Globe, supra*, App. pp. 282-283.

[31]Birney, *supra*, p. 190; Senate Document No. 124, 24th Cong., 1st Sess., 1835-1836; Goodell, *Slavery and Anti-Slavery* (New York, 1852, pp. 413-414; Macy, *The Anti-Slavery Crusade* (Vol. 28 of *The Chronicle of America*, edited by Allen Johnson), Chap. 15; Wilson, *History of the Rise and Fall of the Slave Power in American* (Houghton, Mifflin & Co., 7th Ed.), Vol. 1, Chap. 24; *Third Annual Report of the American Anti-Slavery Society, supra.*

these ends was fought and defeated in every state legislature where introduced on the grounds that the societies and their publications constituted the propagation of opinions with which, by virtue of the guarantees of free speech, government was powerless to interfere.[82]

This history is pregnant with the meaning of the First Amendment. In it is the recognition in practice of the vital connection between propagation of a cause and the freedom to form associations to that end. The hand of government was stayed that such societies might have the full protection of the First Amendment and its counterpart in state Constitutions, and that the processes of representative government might function in full vigor to solve the critically important as well as the superficial problems of society.

Significantly also does this history point to the price of ignoring the command of the First Amendment. The repression of advocacy of abolitionism in the South prevented that full exchange of opinion which representative government requires for the peaceful adoption of change. It is therefore not too much to claim that Southern repression irretrievably committed the resolution of the slavery question to the forum of force.[83]

True to this history has been the decisions of this Court applying the protection of the First Amendment to the right of individuals to form associations for the propa-

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[82]Birney, *supra*, pp. 201, 233-237; Goodell, *supra*, note 31, pp. 418-419; Macy, *supra*, note 31; Wilson, *supra*, note 31; Third *Annual Report*, *supra*, note 28.

[83]*Cf.* the observation of this Court in *De Jonge v. Oregon*, 299 U. S. 353, 364. In the North, on the other hand, the continued advance of abolitionist advocacy led to the formation of political organizations which finally became part of the Republican Party in 1856. Calhoun predicted this as a reason for repression (*Congressional Globe*, *supra*, p. 10.)

gation of causes. Whether it be for religious causes or secular ones the citizen's right to "adhere" to such organization as he chooses is protected, and the Fourteenth Amendment stands as a bar to State action in the same measure as the First stands against Federal intrusion. (*Cantwell v. Connecticut*, 310 U. S. 296, 303; *Thomas v. Collins*, 323 U. S. 516, 539.) Association in political parties has been recognized as necessary to the operation of a republican form of government constituting as they do the effort of the individual to propagate and promote his views on public affairs (*Ex Parte Curtis*, 106 U. S. 371, 375, see also dissent, 106 U. S. at pp. 376-377), and such association as well as activities in furtherance of its aims are an exercise of the rights reserved to the people under the Ninth and Tenth Amendments (*United Public Workers v. Mitchell*, 300 U. S. 75, 94).

> "One of the chief reasons for freedom of the press is to insure freedom, on the part of individuals and associations of individuals at least, of political discussion of men and measures, in order that the electorate at the polls may express the genuine and informed will of the people. Brandeis, J., in Whitney v. People of State of California, 274 U. S. 357, 375, 47 S. Ct. 641, 71 L. Ed. 1095; Hughes, C. J., in Stromberg v. People of State of California, 283 U. S. 359, 369, 51 S. Ct. 532, 75 L. Ed. 1117, 73 A. L. R. 1484. Individuals seldom impress their views upon the electorate without organization. They have a right to organize into parties, and even into what are called 'pressure groups,' for the purpose of advancing causes in which they believe. They have a right to engage in printing and circulating their views, and in

advocating their cause in public assemblies and over the radio."

Bowe v. Commonwealth, 320 Mass. 230, 252, 69 N. E. 2d 115, 167, 167 A. L. R. 1447, 1463-1464.

As was pointed out in *Thomas v. Collins*, 323 U. S. pages 530-531, it was no coincidence that the "cognate" rights of assembly and petition are conjoined with those of speech and press. They protect not simply the right to speak but to speak with a voice as strong as the adherence of the convinced will permit. The security thus given is, like its correlatives of speech and press, both the lifeblood and the protection of representative government.[24]

[24]"It is difficult in the light of history to see that anything has been gained in the long run by multiplying prohibitions upon the right of association. Where men feel passionately upon some object they will combine to promote it; and any prohibition upon their effort to do so only serves to drive their activities into secret channels where their discovery is more difficult. It may well be argued, for example, that much of the violence of the French and Russian history in the nineteenth century was due to exaggerated suppression of the right to form political associations; for men who cannot persuade a government to accept their view will seek sooner or later to impose it upon that government. Prohibitions did not seem to have any long run effect save that of exacerbating the temper of the disputants."—*Encyclopaedia of the Social Sciences*, Vol. VI, p. 449, "Freedom of Association" (Harold J. Laski).

POINT TWO

The Compulsory Disclosures Required by Paragraph "D" of the Oath and Affidavit Prescribed in the County Loyalty Order Constitute Restraint and Coercion by the State of Petitioners in Their Free Choice of Opinions and Associations and Their Advocacy of Ideas, Censor the Same and Thereby Usurp Pro Tanto the Sovereignty of the People.

In Point I, *ante*, petitioners urged that, since the compulsory disclosure requirement prescribed in paragraph "D" of the Loyalty Order injects the State into the area of ideas and their propagation, the Order is invalid as a matter of principle. This branch of the argument is devoted to showing that, having entered the area of opinion and advocacy, the State is exercising, through the Loyalty Order, its power to constrain petitioners not to hold or not to advocate named ideas.

A. The Compulsory Disclosures required by the Loyalty Order Effect a Restraint and Coercion upon Petitioners to Avoid or Abjure Named Ideas and Advocacy.

The restraint and coercion operating upon petitioners by virtue of being forced to make the disclosures prescribed in paragraph "D" come from two sources: *First*, from fear of economic reprisal by the County as petitioners' employer; and *second*, from fear of social and other reprisal by the public at large, which might be set in motion by disclosure to the public by the County of the matters demanded of petitioners.

As petitioners' employer the County is positioned economically to disadvantage or penalize petitioners in manifold ways, direct and indirect. It brandishes power in the ultimate to end their means of livelihood and to

interrupt, if not destroy, their careers. In such premises economic coercion would attend any inquiry by the County into the organizational activities of its employees even were the inquiry non-selective and unattended by indications of hostility.[35] But here the County seeks disclosure respecting connection with specifically named organizations selected by it, and concerning those organizations it has expressed a value judgment making them plainly suspect. On the face of the Loyalty Order itself, the County has characterized the organizations listed under paragraph "D" as being in every case either an organization "known to be subversive or Communistic" or an organization which may "have come under some subversive or Communistic influence" (P. 18, first paragraph). The County further states in the Loyalty Order that it requires the disclosures of connection with such suspect organizations as part of a program of determining "whether or not there are any Communists, avowed or otherwise . . . employed by the County of Los Angeles" (P. 16), to the avowed end of "ferreting out Communism" (P. 18).

The restraint and coercion arising from fear of public opinion stems from the threat, apparent on the face of the Loyalty Order, that the County may publicly disclose the information respecting individuals obtained through the Oath and Affidavit. While the committee administering the Loyalty program is required to keep this information "confidential" during its investigation, it becomes public at the point where the committee reports to the

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[35]By this we do not mean to cast the slightest implication that such a non-discriminating inquiry would be constitutionally proper. We distinguish it to show that the restraint and coercion effected by the County Loyalty Order as drafted is specific and therefore the more gross.

Board of Supervisors, as it is required to do, its discovery of "any known subversively inclined persons" (P. 18, paragraphs 6 and 8). Such public exposure would set in motion all of the moral, social and economic reprisals that intolerant majorities have historically vented upon the outnumbered advocates of dissidence and causes with little following.[88]

In both respects the restraint and coercion operates to affect those who have already made a choice as to any of the causes indicated in paragraph "D" and those who have not. The former will be constrained to abandon their

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[88]The County here would not only precipitate the social reprisal but would contribute to its severity by virtue of the value judgment previously described. Also contributing to the hostility of public opinion toward the listed organizations are the characterizations of them by the California Legislative Committee referred to in the Loyalty Order. A check of these organizations against the references to the Legislative Committee's reports given in the Loyalty Order, and against the Committee's 1948 Report shows that of the 144 organizations, 129 were described as "Communist dominated" or "Communist front" organizations, 10 as connected with Fascist movements, 1 with no apparent connection (Humanist Society of Friends, P. 23), and 4 could not be found in the Reports at all. (See *Un-American Activities in California, Report of the Joint Fact-Finding Committee to the 55th California Legislature*, 1943, *passim*; *Third Report, Un-American Activities in California, Report of the Joint Fact-Finding Committee on Un-American Activities to the 57th California Legislature*, 1947, *passim*; *Fourth Report, Un-American Activities in California, Report of the Joint Fact-Finding Committee to the 1948 Regular California Legislature*, 1948, "Communist Front Organizations," *passim*. The Legislative Committee has charged that the organizations it labels as "Communist dominated" or "Communist front" are participants in a "criminal conspiracy." (1948 Report, p. 93.) The denunciation of the organizations has been official in nature and broadcast statewide. Such functions the Committee apparently conceived to be the use of "the glaring light of publicity" (1943 Report, p. 383), and the technique of "investigation and exposure." (1948 Report, pp. 677 ff.) The Committee has cited a public opinion survey, indicating that 55% of the sample interrogated had heard of the Committee's work. (*Fifth Report of the Senate Fact-Finding Committee on Un-American Activities*, 1949, p. 685.)

choice or at best persist in it in the face of the County's disapproval. The latter will be influenced to reject such causes. Both will feel pressure to seek only choices which will meet the County's test of acceptability.

Wherever it has served the interest of society to preserve freedom of choice, the law has protected those who exercise it from being forced to disclose their choice to, or suffer its apprehension by, others situated to cause or inflict any form of reprisal.

(1) Restraint and Coercion Through Compulsory Disclosure of Trade Union Opinion and Association.

Under the National Labor Relations Act, as amended, (29 U. S. C. A. 151 ff) employees in private industry affecting commerce are secured freedom of choice in self organization.[37] From the earliest days of the enforcement of this statute it has been uniformly recognized that inquiry by an employer into the union views or affiliations of his employees is necessarily coercive and therefore destructive of their independent choice of a collective bargaining representative. This, because the employer has the power to attach to his disapproval of the disclosure obtained, consequences adverse to the employee. The National Labor Relations Board has from the beginning condemned such interrogations as "flagrant intimidation and coercion of the . . . employees" (*Re Greensboro Lumber Co.*, 1 N. L. R. B. 629, 632) and "*per se* violative

[37]The Act of course neither grants nor creates private rights but rather provides protection for the exercise of the "fundamental" right of association vouchsafed to all citizens. (*NLRB v. Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Thomas v. Collins*, 323 U. S. 516, 533-534.)

of the Act." (*In Re Newman Machine Co.*, 74 N. L. R. B. 220, 221, note 3, 20 L. R. R. M. 1167, 1168.)[28]

This court has upheld the conclusions of the Board as to the coercive effect of inquiry by employers into the union views or affiliations of their employees. (*H. J. Heinz Co. v. NLRB*, 311 U. S. 514, 518, wherein the illegal conduct included "questioning employees concerning their labor union sympathies" by two representatives of the employer.) In *NLRB v. Times-Picayune Publishing Co.*, 5 Cir., 130 F. 2d 257, 258, similar conduct was characterized as intermeddling "with regard to unfettered self-organization." (See also *NLRB v. Norfolk Southern Bus Corp.*, 4 Cir., 159 F. 2d 516, 518, cert. den. 330 U. S. 844.)

(2) Restraint and Coercion Through Forced Disclosure of Religious Opinion or Affiliation.

(a) *Disclosure Through the Released School Time Program, Illinois ex rel. McCollum v. Board of Education.*

In *Illinois ex rel. McCollum v. Board of Education*, 333 U. S. 203, this Court struck down the "released time" religious training program theretofore in effect in Illinois grade and junior high schools. One of the features of the state program recognized by that decision to be destructive of free choice in the area of religion was compelled public disclosure of minority opinion which exposed the children adhering thereto to social pressure by majority groups. In that case the school children

[28]The Board similarly condemns employer coercion through employment application forms calling for disclosure of either the fact of union affiliation or the nature of it. (See NLRB *Seventh Annual Report*, 1942, p. 44.)

were required once each week to separate themselves into groups to attend different classrooms, there to receive religious training from volunteer teachers appearing for various religious creeds. There was no state compulsion favoring attendance at any particular class and there was no affirmative discrimination against any creed, all being free to participate equally. However, those pupils not choosing to attend one or another of the religious classes afforded by participating creeds were required to assemble in yet another classroom to continue secular study. Thus, by process of compelled choices and elimination, the children of non-participating creeds together with children accepting no creed at all were made known to their fellows and were thereby exposed to social pressure and coercion tending to influence them to adopt conforming majority ideas. This Court observed that the state program rendered the religious creeds participating in the program "an invaluable aid in that it helps to provide pupils for their religious classes." (See 333 U. S. 212.) The program was held unconstitutional as a violation of the neutrality required of the state in the area of religious thought.

In his concurring opinion, Mr. Justice Frankfurter made this point particularly plain. He observed that the Constitution in the area of religious thought prohibits "coercion however subtly exercised" and that the Illinois program contained "powerful elements of inherent pressure" not removed by the treatment of all sects equally by the school authorities.

> ". . . That a child is offered an alternative may reduce his constraint; it does not eliminate the operation of influence by the school in matters sacred

to conscience and outside the school's domain. The law of imitation operates, and non-conformity is not an outstanding characteristic of children. The result is an obvious pressure upon children to attend. Again, while the Champaign school population represents only a fraction of the more than two hundred and fifty sects of the nation, not even all the practicing sects in Champaign are willing or able to provide religious instruction. The children belonging to these non-participating sects will thus have inculcated in them a feeling of separatism when the school should be the training ground for habits of community, or they will have religious instruction in a faith which is not that of their parents. As a result, the public school system of Champaign actively furthers inculcation in the religious tenets of some faiths, and in the process sharpens the consciousness of religious differences at least among some of the children committed to its care. Those are consequences not amenable to statistics. But they are precisely the consequences against which the Constitution was directed when it prohibited the Government common to all from becoming embroiled, however innocently, in the destructive religious conflicts of which the history of even this country records some dark pages."—*Illinois ex rel. McCollum v. Board of Education*, 333 U. S. pp. 227, 228.

The coercion upon petitioners' freedom of choice far exceeds in nature and degree that in the *McCollum* case. First, the more significant coercion here involves intimidation by an employer able to destroy petitioners' economic security, a factor wholly absent in the *McCollum* case. Second, the compulsion there was the pressure of others set in motion by the state. But here the state is not merely positioned to set in motion the hostile opinion

of the community by exposing individuals as involuntary targets thereof, but additionally has aggravated the hostility by its own acts as previously related.

(b) *Restraint and Coercion by Means of Disclosure Through Payment of Taxes to "Christian Societies" Designated by the Taxpayer; the Virginia Bill for the Support of Religious Teachers.*

The *McCollum* case is consistent with a powerful precedent in our constitutional history, the reasoning of Madison's Remonstrance against the Virginia bill of 1784 for religious assessments.[39] The bill levied a tax on all Virginia residents "for the support of Christian teachers." Each taxpayer was permitted to direct the payment of his tax to any "society of Christians" he might choose, and the taxes of those making no such designation were to be placed in the public treasury for use in "the encouragement of seminaries of learning." It required that the sheriff of each county return annually upon oath the names of the taxpayers in each county, the amount of the tax paid and the society designated by each. He was to list separately those who designated no society. Copies of his lists were to be filed with the county clerk and publicly posted "for the inspection of all concerned." (See 330 U. S. at pp. 73-74.)

In circumstances closely parallel to the case at bar, and the *McCollum* case, the bill would have compelled disclosure by all citizens of their religious opinions and

[39] The text of the Remonstrance and of the bill against which it was directed are set out in an Appendix and Supplemental Appendix, respectively, to the dissent in *Everson v. Board of Education*, 330 U. S. 1, 63, 72.

affiliations or the absence thereof. While the disclosure would have been made to an agent of government, he was required to make it public. By operation of the bill the conscience of the citizen would have been exposed to the pressures of public intolerance.

Madison sharply perceived the coercive effect of such disclosure and its bloody parentage:

> ". . . What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be, in its present form, from the Inquisition it differs from it only in degree. The one is the first step, the other the last in the career of intolerance."—Madison's Remonstrance, quoted in 330 U. S. pp. 68-69.

The authorities here reviewed render inescapable that which reason alone makes plain—that the disclosures compelled by the County Loyalty Order are coercive. The *NLRA* cases are indistinguishable in fact and in principle. Moreover, they point to a factor of coercion present in the instant case which is in addition to the pressure of public opinion found in the *McCollum* case and the Virginia bill. In short, in these precedents coercion was found on the basis of either of two factors both of which obtain in the case at bar. There is coercion in the instant case if coercion is not to be wholly redefined as a legal concept.

B. Since the Restraint and Coercion Effected Upon Petitioners Through the Disclosures Required in Paragraph "D" of the Loyalty Order Operates Upon Their Choice of Ideas and Advocacy in the Exercise of Their Sovereign Powers as Citizens, They Constitute Governmental Censorship of Thought and Speech Amounting to Usurpation of the People's Authority.

The effect of the compulsory disclosure requirement of the Loyalty order, being coercive upon belief of association, is by that token censorship. It is directed at influencing the content of men's thoughts and affiliations. It is an assumption by the state of "a guardianship of the public mind."[40] This censorship, going to those matters needful "to enable the members of society to cope with the exigencies of their period,"[41] strikes at the very sinews of representative government. It is a usurpation of popular sovereignty.

Involved here are fundamentals which have guided and controlled decisions by this Court in speech and religion cases in widely varying fact situations—indeed, fundamentals which may be said to be implicit if not explicit in every speech or religious decision in this Court's reports. They are these: in the area of speech and ideas, government may not censor; it may not discriminate; it may not advantage or disadvantage any idea in its free competition for acceptance by the people; it may regulate the "time, place or manner" of public debate, but it may not regulate the content of the ideas which may be so debated nor say what speakers may engage therein; it may never be a participant in the market place of opinion even

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[40]Mr. Justice Jackson, concurring, *Thomas v. Collins*, 323 U. S. 516, 545.

[41]*Thornhill v. Alabama*, 310 U. S. 88, 102.

in the guise of maintaining public order. Government under the American concept of state has no right to intrude itself into the content of the debate or to seek to control or influence its end conclusions, for otherwise the people's agent would have power to supervise its own commission.

In *Schneider v. Irvington*, 308 U. S. 147, 164, this Court expressed the concept in these words:

> "Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others may not, disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press."

As Mr. Justice Frankfurter put it in *Kovacs v. Cooper*, 93 L. Ed. (Adv. Op.) 379, 391, government may in the exercise of its power over the time, place and manner of exercising speech, regulate the volume of noise produced by sound trucks but it may not "prescribe what ideas may be noisily expressed." (See also Mr. Justice Jackson concurring, *Terminiello v. City of Chicago*, 93 L. Ed. (Adv. Op.) 865, 877-878, 883; first *Opelika* case, 316 U. S. 584, 595-596.)

These barriers confront government wherever and however its actions impinge upon speech or religion. The form of the state action is of no concern. These theses—no censorship, no reserving of discretion to discriminate among ideas or speakers, equal rules for all speakers and all ideas, and a right in each and all to speak for any idea so long as the time and manner be appropriate—these basic rules run through cases governing such diverse types and forms of state action as the following: taxation (*Murdock v. Pennsylvania*, 319 U. S. 105; *Jones v. Opelika*, 319 U. S. 103); licensing (*Cantwell v. Connecticut*, 310 U. S. 296; *Largent v. Texas*, 318 U. S. 418; *Lovell v. Griffin*, 303 U. S. 444); a criminal statute outlawing peaceful picketing of a place of business "without a just cause or legal excuse" (*Thornhill v. Alabama*, 310 U. S. 88); and a statutory scheme for injunctive "abatement" of newspapers as nuisances (*Near v. Minnesota*, 283 U. S. 697).[42]

Government, then, is prohibited from undertaking any action, whatever its form, which is censorious or discriminatory in its operation on the free interchange of ideas. By no method may it seek to influence or control the ideas which the people may adopt. It may not disadvantage or advantage one idea in even the smallest way for it has *no* right to influence the contents of private choice by any citizen.

The County violates these principles by the Loyalty Order presented here. By the very act of compelling any

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[42]Even in the field of regulating radio channels where, for limitation in the number of wave lengths, the government must reject some applicants for channels, it cannot "choose among applicants upon the basis of their political, economic or social views, or upon any other capricious basis." *National Broadcasting Co. v. United States*, 319 U. S. 190, 226.

disclosure of petitioners' opinions or advocacy the County would position itself to unleash against petitioners its powers as their employer as well as the pressure of public opinion should it disapprove of the petitioners' disclosures. This case presents but another form of the use of state power to achieve censorship. The lessons of this Court's decisions are that, however government power is contrived, the end of censorship is forbidden to it.

The Court in *West Virginia v. Barnette*, 319 U. S. 624, dealt with compulsion to profess a belief, not held, to the end that it might ultimately be embraced. Here it deals with a compulsion to acknowledge a belief, held presently or in the past, to the end that it may be removed from the intellect as a heresy. In both cases the issue is conformity. There the state objective was a generalized conformity embracing devotion to country. Here the state objective is a sharply specific conformity through the rejection by name of ideas and programs in fields where they must have full play in the process that determines the dynamics of the state itself. There, to the end that officialdom might have no opportunity to "coerce" the "consent of the governed," the Court was prompted to remind government that it may not be "partisan or enemy of any class, creed, party or faction" (319 U. S. p. 637). Here too the Court is called upon to prevent a subversion of our institutions by government partisanship and here that partisanship lies in open opposition to specific ideas identified by content only. Here government censorship is much further advanced toward "exterminating dissenters" and in consequence the "free and responsi-

ble government" of Jefferson and Madison is the more seriously endangered.

The case at bar does not turn on whether the County has or will in fact use its program to inflict or cause to be inflicted any reprisal, economic or social, upon petitioners for the expression of any opinion. The infliction of penalties for opinions specifically expressed is only one aspect of the suppression of speech and thought worked by any censorial system. The mere existence of any censorial program "results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview." (*Thornhill v. Alabama*, 310 U. S. 88, 98.) The power of a censor "is pernicious not merely by reason of the censure of particular comments but by reason of the threat to censor comments on matters of public concern. It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion" (310 U. S. p. 97). For these reasons one may challenge a licensing system without first applying for a license and encountering a specific refusal, and the same truths hold here.

The system of compelled accounting which the County here seeks to establish would at the moment of its institution raise a "pervasive threat" of penalty and cast a "pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview." In plain terms, if the disclosures sought in paragraph "D" may be compelled, a "pervasive restraint" immediately falls over all speech, thought and association which its

employees may reasonably anticipate might displease the County, including at a minimum all contact with or support of any of the specifically listed organizations. This is the more especially true because those organizations are frankly regarded by the County with at least a suspicious eye. If disclosure of connections with or support of those organizations may be compelled, fear of reprisal is more real and therefore the more immediately restraining and coercive upon petitioners to be silent, to recant or to embrace the opposite of the opinions and advocacy indicated in paragraph "D."

In this manner the County asserts coercion over its employees with respect to their choice and expression of ideas within an area broad in range and touching matters of utmost significance. Included are not only the great international questions of our day raised by the issue of private property *versus* socialization of the means of production, but also a vast gamut of more transitory questions such as price and rent control, the poll tax, racial and religious discrimination, defense of labor leaders like Tom Mooney and Harry Bridges, support for the Spanish Loyalists, support of those fighting for Indonesian independence, the program of small political parties such as the Farmer Labor Party.

To tolerate power in government thus to restrain and coerce all or any part of the people in their choice and expression of ideas with respect to such an array of subjects is to tolerate *usurpation*. The people alone have authority to make ultimate societal policy respecting those, as all other, issues in our nation's destiny. And in their

exercise of judgment in making such choices, the people plainly must have independence and free agency, else their judgment is not their own and their authority exists only in name. For the state to control or improperly influence the people, or so much as one among them, in the making of the choices here described, is for the state to arrogate to itself, *pro tanto*, the sovereign authority which the Constitution vests in the people. That is why this Court has always guarded freedom of speech so jealously. That is why it has always denied the existence of power to censor or to discriminate in the area of speech. To permit government to control or improperly influence the free agency with which the people conduct themselves as members of the nation's "ultimate tribunal"[43] is to surrender the foundation of the nation.

[43] *Yick Wo v. Hopkins*, 118 U. S. 356, 370.

POINT THREE

The Requirement Under Paragraph "B" of the Oath and Affidavit Prescribed in the County Loyalty Order That Petitioners Disclose Advocacy of, or Membership in a Political Organization Advocating, the Overthrow of the Governments of the United States, the State of California or the County of Los Angeles by Force and Violence Deprives Petitioners of Freedom of Speech, Press, Thought, Association and Assembly, in Contravention of the First and Fourteenth Amendments.

The County, by paragraph "B" of the Oath and Affidavit prescribed in the Loyalty Order, requires that petitioners disclose whether they are (or at any time since December 7, 1941, have been) advocates of, or members of any political party or organization that advocates "the overthrow of the Government of the United States, or State of California, or County of Los Angeles, by force and violence" (P. 19). For the considerations urged in our statement of premises (Introduction, Subdivision A, *ante*, p. 11 ff) such an inquiry is directed at ascertaining (1) whether petitioners hold opinions on the subject matter indicated, (2) whether petitioners personally do propagate or have propagated (*i. e.*, advocated) those opinions, and (3) whether petitioners do so propagate or have so propagated through participation with their fellow citizens. The requirement of paragraph "B", therefore, is invalid for all of the reasons set forth in the preceding subdivisions of this brief and they are hereby specifically incorporated here by this reference. For two reasons it has seemed advisable, however, to give this portion of the Loyalty Order separate consideration. First, the emotional value judgment which the language of paragraph

"B" carries may obfuscate the clear constitutional principles which make paragraph "B" invalid. Second, the California court rested its decision in large part on premises respecting advocacy of force and violence which can not be reconciled with the Federal Constitution or the decisions of this Court (P. 56, 62-63)."[48]

A. As a Requirement of Disclosure of Opinion Paragraph "B" Is Invalid.

In the area of opinion the Loyalty Order would compel the disclosure of the citizen's opinions on the use of violence in accomplishing political change. It is to be noted that *any* answer to this question discloses an opinion. It may reveal that the citizen approves the use of violence or abhors it or takes some intermediate ground based upon specific circumstances. But no answer can be made that does not disclose an opinion.

The inviolability of the citizen's conscience under our Constitution is absolute. It is subject to no qualification dictated by the nature of the ideas held. However hateful or reprehensible the idea of using violence to accomplish political change may appear to the County officials, or any other officers of government, including the courts, those officers can not compel the citizen to state whether or not he entertains or has entertained in the privacy of his conscience that or any other idea. While the First Amendment continues to embody the philosophy of Jef-

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[48]It is to be noted that the County Loyalty Order imposes the disclosure requirements of paragraphs "B" and "D" in a single inseparable demand. The Loyalty Order nowhere permits petitioners to comply with its terms by signing one paragraph without the other. Invalidity of either paragraph alone, therefore, is separately sufficient to invalidate the entire Order.

ferson and Madison, government is strictly forbidden so to probe into opinion.[46] We incorporate here the Introduction and Point One, subdivision A of this brief.

B. As a Requirement of the Disclosure of Advocacy, Personally or in Association With Others, Paragraph "B" Is Invalid.

In the sense here indicated, paragraph "B" is calculated to force disclosure of the profession and propagation of opinion favoring the use of force to accomplish political change. The Loyalty Order commands disclosures of such propagation whether by individual effort or through association with others. Either form of advocacy is an exercise of free expression and both are equally entitled to the protection of the First Amendment. (See Introduction and Point One, subdivision B).

It is of central importance to this entire discussion that the demand for disclosure is in no way limited to advocacy under any specific set of facts or circumstances. Rather, it reaches advocacy or propagation of any kind under any circumstances touching on the question of the use of force in accomplishing political change. Through the disclosures demanded, the State would reach to "expressions of opinions and exhortations,"[47] both forensic and dissertative as well as to "agitation . . . calling for present violent action".[48] So sweeping an inquiry offends the Constitution.

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[46] "If there be any among us who would wish to dissolve this union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it." (Jefferson, *First Inaugural Address*, Works, Mem. Ed. Vol. 3, pp. 318-319.)

[47] Holmes, J., dissenting, *Abrams v. United States*, 250 U. S. 616, 631.

[48] *Schneiderman v. United States*, 320 U. S. 118, 157.

The command of the First Amendment is unequivocal and absolute:

> "Congress shall make no law . . . abridging the freedom of speech; or of the press; or of the right of the people peaceably to assemble . . ."

Within the area of expression the Congress shall make *no law*. Advocacy of ideas and opinion as distinguished from acts and conduct receive unqualified immunity so that those who are governed in a democratic society may have full access to all ideas and full freedom to discuss them in the performance of their duties as the "depository of the ultimate powers of society."[49] Combined with the Fourteenth, the First Amendment means that no government in the United States may transgress its sweeping command of *no law*. The prohibition is not restricted to those ideas deemed wise or harmless by officialdom. Whatever the content of the idea[50] government cannot interpose against its content or expression. For in these areas the only form of control needed or appropriate in a free society is the competition of free debate in the marketplace of thought.

The clear and present danger rule works no limitation upon the First Amendment. That rule is designed to demark the line between advocacy and action in the often difficult penumbral area between the two. It carves out no area of advocacy subject to government action predicated upon the content of the opinions advanced. It attempts to define the point at which advocacy passes

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[49]Jefferson, Letter to William Charles Jarvis, September 8, 1820. Works, Mem. Ed. Vol. 15, p. 278.

[50]Excluding only the defamatory, the obscene and the "fighting" words, none of which is involved here. See *ante*, p. 27.

over into conduct within the reach of governmental power. In this highly difficult zone the clear and present danger rule was formulated to assist the Court in the delicate task of finding the line where advocacy flows inseparably into action threatening an evil to the state "under circumstances affording no opportunity to test the merit of ideas by competition for acceptance in the marketplace of public opinion" (*Thornhill v. Alabama*, 310 U. S. 88, 104-105; see also Brandeis, J., concurring in *Whitney v. California*, 274 U. S. 357, 377).

It is of primary importance to the disposition of this issue in the case at bar, that it be observed that the clear and present danger rule applies, and can only apply, to the specific circumstances of a particular case. As Mr. Justice Holmes stated in his original formulation,

> " . . . But the character of every act depends upon the circumstances in which it is done . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater, and causing a panic . . . The question *in every case* is whether the words used are *used in such circumstances* and *are of such a nature* as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."—*Schenck v. United States*, 249 U. S. 47, 52. (Emphasis added.)

And in all cases since, the Court has determined where the state may intervene only in the light of the specific utterance and the circumstances in which it was used. (See *Thornhill v. Alabama*, 310 U. S. 88, 104-105; *Bridges v. California*, 314 U. S. 252, 263, 268-270; *Thomas v. Collins*, 323 U. S. 516, 529 ff; *Craig v. Harney*, 331 U. S. 367, 376.)

If advocacy can merge with conduct, then it does so, not in the abstract, but in the conditions under which it is uttered—the circumstances obtaining at the time. Paragraph "B" does not require disclosure of advocacy of the use of violence in the accomplishment of political change under circumstances merging it with conduct within the reach of the State, rather, it inquires concerning all such advocacy irrespective of circumstances. It is, therefore, directed at speech, not conduct, and is violative of the First and Fourteenth Amendments.

For advocacy of the use of force in accomplishing political change, absent circumstances in which that advocacy flows immediately and inseparably into the force urged, is still free speech:

> "There is a material difference between agitation and exhortation calling for present violent action which creates a clear and present danger of public disorder or other substantive evil, and mere doctrinal justification or prediction of the use of force under hypothetical conditions at some indefinite future time —prediction that is not calculated or intended to be presently acted upon, thus leaving opportunity for general discussion and calm processes of thought and reason. *Cf.* Bridges v. California, 314 U. S. 252, 86 L. Ed. 192, 62 S. Ct. 190, and Justice Brandeis' concurring opinion in Whitney v. California, 274 U. S. 357, 372-380, 71 L. Ed. 1095, 1104-1108, 47 S. Ct. 641. See also Taylor v. Mississippi, 319 U. S. 583, *ante*, 1600, 63 S. Ct. 1200, Nos. 826-828 this term."—*Schneiderman v. United States*, 320 U. S. 118, 157-158.

Absent a limitation of the paragraph "B" inquiry to specific facts and circumstances merging advocacy with action, its validity can be justified to this Court only upon

the assumption that doctrines advocating the overthrow of government by force and violence *in and of themselves* constitute a clear and present danger. So to apply the rule would pervert it. The question would be changed from, "Has the advocacy, under the circumstances, merged with dangerous conduct?" to "Are the ideas advocated dangerous?" From a delicate instrument for assaying conduct, it would become an instrument for repression permitting government to "censor" the thoughts and speech of "those whose convictions and affiliations it does not tolerate." (*Danskin v. San Diego School District*, 28 Cal. 2d 536, 545.)[51]

Once the government obtains power to exclude from the marketplace of public opinion ideas because they are dangerous, the door has been shut upon political change achieved through the processes of representative government. New ideas are always dangerous to those in power, and in America, as elsewhere, that power has historically been exerted against change. A hundred years and more ago the idea of abolishing slavery was so treated. Then, as now, the claim was that only advocacy of violence was

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[51]In the *Danskin* case was presented the validity of a requirement that applicants for a permit to hold a meeting in a public school, generally available to all, sign an affidavit denying that they advocate and that they are "affiliated with any organization which advocates or has as its object or one of its objects the overthrow of the present Government of the United States or of any State by force or violence, or other unlawful means." There, after a careful review of this Court's opinions, the California Supreme Court held that the clear and present danger rule applied to such compulsory disclosures and that the failure to apply it to such a requirement of disclosure turned the inquiry into simply a probe of opinion. On authority of this Court, the California court said, "doctrines advocating the overthrow of the government by force do not of themselves constitute a substantial danger." (28 Cal. 2d p. 543.)

attacked. Then, as now, the claim was counterfeit and if it deceived anyone it did not and could not deceive history. Not advocacy of violence but advocacy of equality was suppressed; not insurrectionists but the Constitution suffered assault.

Few if any ideas have ever been subjected to more savage societal efforts at repression than the cause of abolition. Every conceivable weapon of retaliation was employed against its advocates.. Abolitionists were jailed, lynched, beaten and stoned, with official approval if not participation.[83] Their papers were suppressed by laws[84] and excluded from the mails by executive action.[85] To speak abolitionism in the South meant death.[86] And all this repression, legal, semi-legal and extra-legal, was justified by its perpetrators, when justified at all, as the suppression of advocacy of violence and insurrection.[86]

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[83]Birney, *James G. Birney and His Times* (Appleton & Co., N. Y., 1920), pp. 184-191, 230 ff.; Macy, *The Anti-Slavery Crusade* (Vol. 28 "The Chronicle of America," edited by Allen Johnson), pp. 70-71, 75-77, 83; Wilson, *The History of the Rise and Fall of the Slave Power in America* (Houghton, Mifflin & Co., 7th Ed.), Vol. I, Ch. XXV, Vol. II pp. 671-672; Goodell, *Slavery and Anti-Slavery* (Harned & Co., N. Y., 1852), Ch. XXXIII, XXXIV; Whipple, *The History of Civil Liberty in the United States* (N. Y., 1927), pp. 84-89.

[84]Wilson, *supra*, Vol. I p. 196, Vol. II p. 670; Whipple, *supra*, pp. 89-90; Birney, *supra*, pp. 130 *et seq.*, 190-197; Macy, *supra*, p. 83; *Third Annual Report of the American Anti-Slavery Society* (William Dorr & Co., 1836), p. 49.

[85]Macy, *supra*, pp. 75-77; Birney, *supra*, pp. 184-191; Whipple, *supra*, pp. 108-114.

[86]*Third Annual Report of the American Anti-Slavery Society*, *supra*, pp. 18, 50-51; Wilson, *supra*, Vol. I pp. 558-559.

[86]President Jackson in December, 1835, in a message to Congress and the nation, denounced the abolitionists as persons engaged in "unconstitutional and wicked" attempts to "instigate the slaves to insurrection," as evil, malicious men seeking to precipitate "all the horrors of a servile war." (*Congressional Globe*, 24th Cong., 1st

The cold record of history makes it plain that the South and its defenders repressed the abolitionists not because they advocated violence, but because they advocated an end to slavery.[57] It was not appeal to violence but to conscience which the South feared.[58] Knowing the re-

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Sess., 1835-1836, pp. 4, 10.) Congressman Garland of Virginia branded abolitionists "murderers" on the floor of the House of Representatives. (*Congressional Globe*, 24th Cong., 1st Sess., 1835-1836, App., pp. 15, 17.) The Legislature of Alabama memorialized Congress and the northern states to outlaw abolitionist societies as "malicious and heartless societies" whose literature was "calculated to destroy our peace and sever this union." (Sen. Doc. No. 124, 24th Cong., 1st Sess., 1835-1836.) In Kentucky the newspaper, "The Baptist Banner," raged against abolitionists: "We can not call them misguided philanthropists or enthusiastic Christians, but revolutionists and assassins." (Martin, *The Anti-Slavery Movement in Kentucky* (1918), p. 77.) In Richmond, Virginia, a massed assemblage of the "leading citizens" of that city passed a resolution denouncing abolitionist societies as "incendiary and seditious associations" (*Third Annual Report of the American Anti-Slavery Society, supra*, p. 57), and a comparable assemblage in Alabama called them associations of persons "whose sole and avowed object is to sow the seed of discord, rapine and murder among the slaves of the South." (*A Collection of Valuable Documents*, "James G. Birney's Letter; A Vindiction of Abolitionists" (Isaac Knapp Co., 1836), pp. 6-8.)

[57]The literature of the abolitionists could scarcely have been authored to incite insurrection by the slaves. Not only was it universally peaceful in content, but it was sent not to the slaves but to their southern masters (hardly likely subjects for insurrectionary propaganda) and in any event, the slaves could not read. (Goodell, *supra*, pp. 415-416 and Ch. XXXII; Macy, *supra*, Ch. V; Birney, *supra, passim; A Collection of Valuable Documents*, "Protest of the American Anti-Slavery Society to President Jackson, Dec. 26, 1835" (Isaac Knapp Co., 1836), pp. 46-47.)

[58]"We believe that we have most to fear from the organized action [of the abolitionist societies] upon the CONSCIENCES and fears of the slaveholders themselves; from the insinuation of their [the abolitionists'] dangerous heresies into our schools, our pulpits and our domestic circles. It is only by alarming the *consciences* of the weak and feeble, and diffusing among our own people a morbid sensibility on the question of slavery, that the abolitionists can accomplish their object." (Editorial from the southern newspaper, "The United States Telegraph," quoted in *Third Annual Report of the American Anti-Slavery Society, supra*, p. 47.)

alities of popular government, they realized that such appeals, finding receptive ears, could arouse men to associate together for the advancement of that cause, and so their desperate cry was to nip the movement in the bud before it gained political momentum. Thus, John Calhoun spoke to and for all southern society in 1835 in announcing forthrightly that the real danger of the abolitionists lay in their efforts to "make their movements the basis of a powerful political party . . . diffusing, as widely as possible, hatred against the slaveholding states."[59] Henry Clay of Virginia expressed the same feeling: "These ultra-abolitionists have ceased to employ the instruments of reason and persuasion, have made their cause political and appealed to the ballot box . . . "[60] Calhoun and Clay correctly apprehended the functions of free speech; when men can examine ideas through discussion they will seek to effectuate them through the ballot. To stop change the South outlawed ideas in the name of preventing force and violence. Because of this, there was visited upon this country, through the Civil War, the cruelest form of force and violence for the accomplishment of political change in its entire history.

History is as inexorable as logic. Change, no matter how far-reaching, can not be prevented by suppressing its spokesmen as advocates of force and violence. If men find truth in the idea they will effect the change whether or not authority wills it. Authority can suppress advocacy of change and destroy representative government, or permit full discussion and avert resort to force. The choice

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[59]Quoted in *Third Annual Report of the American Anti-Slavery Society*, *supra*, p. 47.

[60]Quoted in Birney, *supra*, p. 345.

is between preserving the democratic process and ravaging it.[a]

> ". . . The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government." —*De Jonge v. Oregon*, 299 U. S. 353, 365. (See also *Stromberg v. California*, 283 U. S. 359; *Fiske v. Kansas*, 274 U. S. 380.)

The position of petitioners here is that of the nation concerning the principles to govern the relation of men to government world-wide, in respect of the great ideological conflicts of the present era:

> "The present laws of the United States prevent incitement to violence for any reason when there is a clear and present danger that violence will actually result. Long experience with the problem of free speech has led to the conclusion that any greater limitation would be liable to misuse for the purpose

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[a] "Our faith in American democracy is confirmed not only by its results, but by its methods and organs of free expression. They are the safeguards against revolution. To discard the methods of representative government leads to the misdeeds of the very extremists we denounce—and serves to increase the number of the enemies of orderly free government." (Statement of Governor Alfred E. Smith of New York in 1920 *apropos* the exclusion of five socialist deputies from the state legislature, *Progressive Democracy: Adresses and State Papers of Alfred E. Smith* (Harcourt, Brace & Co. (1928), p. 273.)

of suppressing free speech. It is felt that the utmost freedom of speech is a better safeguard against hostility and violence than general laws giving increased powers to suppress freedom of speech".—Statement of the United States Representative at the Seat of the United Nations to the Secretary-General of the United Nations, April 15, 1948.[61a]

[61a]Set forth in *Comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation*, Memorandum by the Secretary-General, April 16, 1948, E/CN.4/82 at page 12.

POINT FOUR

The Deprivations of Freedom of Thought, Speech, Press, Religion, Association and Assembly Effected by the County Loyalty Oath May Not Be Excused Merely as a Regulation of Public Employees in the Civil Service. The Standards of the Loyalty Oath Are so Lacking in Ascertainable Meaning as to Define No Permissible Objective Related to the Effectiveness of the Public Service.

A. The Position of the Court Below.

The California court justified the Loyalty Order on the thesis that petitioners in entering upon public employment gave up the constitutional freedoms here urged (P. 51). At the outset it should be noted that the "surrender" relied upon by the California court was an implied surrender, not express, for it pointed to no provision of local law or employment contract creating such a cession. Indeed the Court ignored a provision of the Los Angeles County Charter[62] specifically to the contrary. It provides:

> "No person in the classified service, or seeking admission thereto, shall be appointed, reduced, or removed or in any way favored or discriminated against because of his political or religious opinions or affiliations."—Los Angeles County Charter, Sec. 41 (Statutes of Calif., 1913, p. 1484).

The County's contract of employment, therefore, protects and preserves the freedom of conscience and association invaded by the Loyalty Order. There was no waiver or

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[62]By California law county charters are adopted by the county through referendum and are subject to approval by the legislature, after which they become "the organic law" of the County. (Calif. Const., Art. XI, Sec. 7½.)

surrender of these freedoms arising from the terms of the contract.

There remains the question whether such a surrender can be effected by operation of law because of the nature of public employment. Petitioners and their 20,000 fellow employees do not surrender their citizenship upon entering such employment. They are still subject to the powers of government at all levels, to tax, to take their property for public use, to build public improvements, to declare war and require their service in the armed forces, and to affect the private lives of citizens in all the manifold ways that local, state and federal governments impinge upon them. In all of these activities government represents public employees as all other citizens. They participate in the elective process to express a choice on men and measures in local, state and federal governments.[88] They are entitled, as other citizens, to be free of government censorship in the processes of thought, discussion and association which lead to enlightened public opinion. The Constitution recognizes no second class citizenship. Representative government does not serve its purpose when some citizens freely perform their governmental functions and others are permitted by law to perform theirs only in part. Since representative government rests upon a consensus of all the governed, it destroys itself when it uses its powers, including that of employment, improperly to influence or control the participants or any among them in arriving at that concensus.

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[88]In California the people may participate directly in the legislative process and in the adoption and amendment of state statutes and the state constitution and local charters through the initiative and referendum. (Calif. Const., *supra*, Art. IV, Sec. 2.) The initiative is therein described as "the first power reserved to the people" and the referendum as "the second power reserved to the people."

When the court below held that public employees could bargain away the constitutional safeguards to their exercise of the freedoms of thought, speech and association, it in effect concluded that the all-important governmental functions of a free people in a democratic society could be corrupted by contract. By virtue of this holding, government, whose powers rest on consent of the governed, may purchase at least a part of that consent by the inducement of jobs.

It is an old and familiar concept that public officers in the performance of public duty must act only according to their own conscience and their own honest judgment. Any contract whereby their action or inaction is induced, influenced or controlled by special or private consideration is contrary to elementary public policy and void. (17 C. J. S., *Contracts*, pp. 573, *et seq.*; 12 Am. Jur., *Contracts*, Secs. 203-5, 206-8, 186, *et seq.*; *Rest. of Contracts*, Secs. 559-562, 565, 540-558.)

The same rule of policy applies to the citizen charged with powers and duties of greater societal and public import—as he most assuredly is when participating in the processes of democratic self-government. His participation in activities directed to the formulation of political opinions and the expression of them through speech and association are intimately and determinatively related to the final exercise of the sovereign power to make and enforce policy through the ballot. This is how a government, representative of and responsible to the governed, functions under our constitutional system. All avenues of information and expression must be open to the citizen, and his conscience in the exercise of these governmental functions may not be bought or sold.

"A bargain by a *citizen* or a public official to obtain private advantage for performing or promising to

perform, *or from refraining* or promising to refrain from performing a duty devolving upon him as such, is illegal.

"Comment:

"a. Certain duties devolve upon all citizens, some of which, like the duty to vote, are enforced by no direct sanction. Whether so enforced or not, a bargain to obtain pay or other advantage for performing them, is illegal. So likewise is a similar bargain *to refrain* from performing them. The same principle is applicable to the duties of public officials."—*Rest. Contracts,* Sec. 567. (Emphasis added.)

See also, *2 Elliott Contracts* (1913 Ed.), Section 714; *Martin v. Wade,* 37 Cal. 168, 174; *Newell v. Purdy,* 36 Wis. 213, 223-5; *Gaston v. Drake,* 14 Nev. 175, 188; *Nichols v. Mudgett,* 32 Vt. 543, 548.

And just as citizens may not by private contract barter away their own judgment in the area of public policy-making, neither may they bargain away their rights and duties to assist their fellow citizens in forming their judgments therein through the media of freedom of speech on matters of public concern. Freedom of speech is truly a duty as well as a right and he who has something to say which he believes needs to be heard on a matter of public import has no more right to place a purchase price on his silence than he has to place one on his ballot envelope. Thus in *Board of Education of the Borough of Lawnside v. Haddon Farms,* 128 N. J. L. 306, 25 A. 2d 905, citizens engaged in protesting certain legislation agreed to cease expressing opposition thereto for a consideration. Of this, the Court said at page 306:

"In a democracy, citizens should freely express their opinions to their representatives in the legislature, and agreements to reward them, directly or

> indirectly, if they suppress their views, are void . . . The representatives of the people must be free to learn the views of their constituents upon public matters and promises to pay money, if such views be suppressed, are void."

In *Spayd v. Ringling Rock Lodge No. 665*, 270 Pac. 67, 113 Atl. 70, the Court struck down a provision in a trade union constitution forbidding members from favoring or opposing legislation in opposition to views of the union's national legislative committee:

> "Since plaintiff viewed the statute petitioned against as such a grievance, the course of conduct pursued by him was not merely within his legal rights, but accorded with his solemn duty as a citizen, for the exercise of which he can under no circumstances be penalized".
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> * * *
>
> "The right in question is a fundamental one . . . possessed by members of the state or 'citizens' . . . to work out public weal, rather than by individuals to protect their persons or property or serve private ends . . . . and, when this is kept in view, it is apparent that such a prerogative can neither be denied by others nor surrendered by the citizen himself." —270 Pa. 67, 70, 71.

In fine, then, freedom of speech, thought and association are trusts and duties, not merely rights. They are not the citizen's to dispose of by private contract. Expression and the holding of honestly reached opinions on matters of public concern according to conscience and honest uncorrupted judgment cannot be made the subject for sale, barter or surrender, and the District Court of Appeal erred in conceiving otherwise.

Of the authorities relied upon by the California court none deserve consideration with the exception of a rather ill-considered aphorism of Mr. Justice Holmes when sitting on the supreme bench of Massachusetts[84] (*McAuliffe v. Mayor of New Bedford*, 155 Mass. 216, 29 N. E. 517) and the decision of this Court in *United Public Workers v. Mitchell*, 330 U. S. 75. These cases deal with the power of government to bar its employees from partisan political activities, such as soliciting campaign funds, or serving as a ward committeeman, or paymaster, or poll worker for a political party. These cases approve such limitations on government employees. They do so on the premise that this is necessary in order that public employees may not become pawns of their superiors or dispensers of government favor as the purchase price of political loyalty. But the kind of activity within the reach of government is only *partisan party politics*. This is made clear in the *Mitchell* case:

> ". . . With that limitation only [*i.e.*, 'partisan activity'] employees may make their contributions to public affairs or protect their own interests. . . ." (330 U. S. at p. 99.)

Here there is no attempt to prohibit or regulate partisan party activities. The Loyalty Order is directed frankly at the holding and advocacy of views, not the building of a political machine. This Court was at pains to point out that it did not approve in the *Mitchell* case any governmental interference with "expression, public or private, on public affairs, personalities and matters of public interest" by government employees (330 U. S. at p. 100).

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[84] "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional rights of free speech as well as of idleness by the implied terms of his contract." (P. 52).

The court below erred in yet another and more important respect in relying on the breadth of language in the *McAuliffe* case. It is not true that public employees "suspend" their "constitutional rights of free speech" in accepting public employment. As this Court pointed out in the *Mitchell* case at least some constitutional limitations do apply to government regulations of its employees: "No one would deny" the incapacity of government to adopt "a regulation providing that no Republican, Jew or Negro shall be appointed to federal office, or that no federal employee shall attend Mass . . ." (330 U. S. p. 100).[46] In other words government may not discriminate among causes, sects or races, to favor some and disadvantage others. This points to the more basic difference between the case at bar and both the *McAuliffe* and the *Mitchell* cases. There the prohibition was general in terms applying to all parties. Here the Loyalty Order is specific and selective. It is directed at certain ideas and certain associations, by name as listed in paragraph "D." It is like the regulation against the "Republican" disapproved in the *Mitchell* case. It places the weight of government power on the scales of public opinion against the named causes; the government becomes a partisan. Government must remain neutral in all contests of opinion, religious or secular (*Cf. Everson v. Board of Education*,

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[46]See also the significant statement by Justice Cardozo for the New York Court of Appeals:

"A citizen may not be disqualified because of faith or color from service as a juror. . . . For like reasons we assume that he may not be disqualified because of faith or color from serving the state in public office or employment. It is true that the individual, though a citizen, has no legal right in any particular instance to be selected as a contractor by the government. It does not follow, however, that he may be declared *disqualified* from service, unless the proscription bears some relation to the advancement of the public welfare." (*People v. Crane*, 214 N. Y. 154, 168; 108 N. E. 427, 431.)

330 U. S. 1, 18). The true meaning of the *Mitchell* case here is that this form of government regulation of its employees is void because discriminatory.

The facts of modern society make this a problem of pressing importance. The case at bar presents the effort to abridge the liberties of 20,000 persons in Los Angeles County because they are public employees. But nation-wide, public employees constitute 10% of the working force.[66] Since the working force constitutes virtually the entire adult population, it is a proper deduction to say that nearly 10% of the *voting* population is public employees. The effect of the rationale below is to handicap 10% of the electorate, to change government by consent of the governed to government by consent of 90% of the governed. Ten per cent of those whose function it is to register their will in government is not a group to be lightly cast out of the democratic process, blinded and gagged by arbitrary censorship so that information they need to obtain is not available and that which they have to give may not be communicated.

But the evil does not stop there. To the negative effect of political eneuchism upon 10% of the electorate must be added the potential for corruption of all political processes which this 10% must needs beget. Now subject to inquisition about views which they express and espouse, the public employees will be constrained in the interests of self-protection to avoid all but the most acceptable. Since their position and advancement depend on the approbation of their superiors, the standard of

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[66]In April, 1948, 5,900,000 persons were employed by federal, state or local governments out of a total of 58,330,000 employed persons. In September, 1949, the figures were 5,751,000 and 59,720,000 respectively. (*Survey of Current Business*, Dept. of Commerce, Bureau of the Census.)

acceptability becomes agreement with those who hold the reins of power. The 10% thus become a malleable political force whose enforced inertia facilitates their being moulded to the interests of officialdom.

B. The Loyalty Order Prescribes No Ascertainable Standard of Permissible Action by the State in the Interest of the Effectiveness of the Public Service.

The County Loyalty Order is cast in such loosely drawn and all-embracing terms that it fails to specify any permissible objective related to the effectiveness of the public service. Where regulations and prohibitions threaten to impinge upon the areas of opinion, expression and association they must observe strictly the rules of definiteness in order to avoid censorship over the minds of men. (*Thornhill v. Alabama*, 310 U. S. 88, 97-98; *Winters v. N. Y.*, 333 U. S. 507, 517-518.)

By this principle standards for measuring thought, speech and association cast in loose and indeterminate terms have been consistently stricken down. Illustrative are a proscription of "malicious, scandalous and defamatory" publications or publications not considered to be "usual and legitimate" (*Near v. Minnesota*, 283 U. S. 697, 712-713); prohibition of publications that "so massed their collection of pictures and stories of bloodshed and of lust 'as to become vehicles for inciting violent and depraved crimes against the person'" (*Winters v. N. Y.*, 333 U. S. 507, 514); power to refuse a license for the distribution of leaflets to persons who are "not of good character" or whose cause is "not free from fraud" (*Schneider v. Irvington*, 308 U. S. 147, 158-159); standard permitting a state officer to determine whether a "cause is a religious one or is a *bona fide* object of charity" (*Cantwell v. Connecticut*, 310 U. S. 296, 302); punish-

ment of peaceful picketing at a place of business "without a just cause or legal excuse" (*Thornhill v. Alabama*, 310 U. S. 88, 91, 100); displaying a red flag "as a sign, symbol or emblem of opposition to organized government" (*Stromberg v. California*, 283 U. S. 359, 369).

The standards employed in the Loyalty Order are no less defective. It requires compulsory disclosures of thought, speech and association in order to elicit information by which the County may detect

1) "any known subversively inclined persons" (P. 18, par. 8).

2) "any Communists, avowed or otherwise" (P. 16, first par. of Ex. A),

3) "an advocate of subversive or Communistic doctrines" (P. 18, second full par.).

The standard, "any known subversively inclined persons" is similar in point of vagueness to that considered in *Lanzetta v. New Jersey*, 306 U. S. 451, which held void a criminal statute by its terms applicable to persons "known to be a member of any gang." The language was held void for want of certainty:

> ". . . The enactment employs the expression, 'known to be a member.' It is ambiguous. There immediately arises the doubt whether actual or putative association is meant. If actual membership is required, the status must be established as a fact, and the word 'known' would be without significance. If reputed membership is enough, there is uncertainty whether that reputation must be general or extend only to some persons. And the statute fails to indicate what constitutes membership or how one may join a 'gang.' "—*Lanzetta v. New Jersey*, 306 U. S. 451, 458.

One of the two key words in the Loyalty Order standards is "subversive." Subversive of what is not indicated. Assuming, without basis in the order itself, that "subversive of government" is intended, this expression has become so warped from repetitious use by the over-zealous opponents of departure from the *status quo* that it now conveys only the spleen of its user:

> "In times of fear or hysteria, political, racial, religious, social, and economic groups, often from the best motives, cry for the scalps of individuals or groups because they do not like their views. Particularly do we need to be dispassionate and courageous in these cases which deal with so-called 'subversive activities' . . . Those who are in office are apt to regard as 'subversive' the activities of any of those who would bring about a change of administration. Some of our soundest constitutional doctrines were once punished as subversive. We must not forget that it was not so long ago that both the term *'Republican' and the term 'Democrat'* were epithets with sinister meaning to denote persons of radical tendencies that were 'subversive' of the order of things then dominant."—Attorney General (now Mr. Justice) Jackson. Address delivered before the Second Annual Conference of United States Attorneys at Washington, D. C., April 1, 1940.

The second key expression of the Loyalty Order standards is "Communist" and its variant "Communistic." "Communist" can mean a member of the Communist Party or a believer in a "system of society in which property and the instruments of production are held as a common trust and the profits arising from all labor devoted to the general good" (New York Standard Unabridged Dictionary, Funk & Wagnalls, 1941), or, again,

a hated opponent.[67] Membership in the Communist Party, *qua* membership, is no basis for adverse state action against the employee unless the state is prepared openly to acknowledge that its aim is to destroy "the essence of his guaranteed personal liberty." (*De Jonge v. Oregon*, 299 U. S. 353, 366. See, also, *Herndon v. Lowry*, 301 U. S. 242; *Schneiderman v. United States*, 320 U. S. 118, 157.) That an employee thinks his government could be improved if it took over ownership of some or all of the means of production is likewise no basis for action against him. Assuming this belief to be rejected by a vast majority of our people, including respondents, it remains a belief, and state interposition against the thought its officials may abhor is openly defiant of the principle of "freedom for the thought that we hate." (Holmes, J., dissenting, *United States v. Schwimmer*, 279 U. S. 644, 655; *Schneiderman v. United States*, 320 U. S. 118, 137.)

There are suggestions in the Loyalty Order and in the opinion below that the three standards here under examination actually mean "to advocate the overthrow of the government" (P. 18, 1st par.; P. 56). This is to define uncertainty with unintelligibility. The expression is not qualified as to method, whether peaceful or violent, lawful or unlawful, or as to time, whether the advocacy is for immediate change creating an emergency to the state or a prediction of future events. It can refer to far reaching change or violent destruction, or it can convey only

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[67]The opponents of public housing once called Senator Taft a communist for his sponsorship of public housing legislation. (See Hearings, Committee on Un-American Activities, House of Representatives, 80th Congress, 1st Session, October 20-30, 1947, p. 308. It has been held that the term "Communist" is too devoid of meaning to support a criminal prosecution for false statement in denying oneself to be "a Communist." (*United States v. Hautau* (D. C., N. J.), 43 Fed. Supp. 507, 508-509.)

the anger and bile of an opponent of ideas. For all the reasons set forth in Point Three, *ante*, the term is as meaningless as those it seeks to define. It creates no standard of permissible state action related to efficiency of the public service.

The County has failed to define a single objective justifying the compulsory disclosures required by its Loyalty Order. It has simply adumbrated a vast area of opinion which it proposes to investigate because it would expurgate.

Conclusion

The judgment of the court below should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1949.

No. 50.

JULIA LEARNED STEINER,

Petitioner,

vs.

COUNTY OF LOS ANGELES, *et al.*

On Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District

BRIEF FOR PETITIONER.

Opinions Below.

The opinion of the Superior Court of California [S. 35-43][1] is not reported. The opinion on appeal of the District Court of Appeal [S. 47, P. 47-63] is reported in 88 Cal. App. 2d 481. The Supreme Court of California rendered no opinion in entering its order denying a hearing [S. 49].

[1]The pages of the transcript of record in the case at bar will be designated "S." The opinion of the District Court of Appeal which was rendered in the instant case and in the case of *Parker v. County of Los Angeles, et al.*, with which it was consolidated, is printed only in the *Parker* record. The pages of the *Parker* record will be designated "P."

Jurisdiction.

This Court, acting under Section 1257(3) of the Judicial Code of 1948 (28 U. S. C. 1257(3)), granted petitioner's petition for a writ of certiorari to the District Court of Appeal of California, Second Appellate District, on June 13, 1949 [P. 78]. That Court had entered judgment for the respondents on November 12, 1948 [S. 47, 48], overruling, as had the trial court, petitioner's Federal constitutional objections [P. 60-62]. The Federal constitutional objections were again urged upon the Supreme Court of California [P. 64, 69-72], in which a hearing is discretionary after a decision in the District Court of Appeal; that Court declined to grant a hearing, one Justice voting in favor of a hearing [S. 49].

Statement of the Case.

There are no disputed issues of fact, the trial court having sustained respondent's demurrer [S. 33-34] to petitioner's amended complaint [S. 32].

The Complaint.—The Petitioner, who has been employed as a librarian in a permanent Civil Service position by the County of Los Angeles since 1946, brought this action as a representative suit on her own behalf and on behalf of the other 20,000 County employees, all of whom are similarly situated with respect to tenure, discipline, and regulation of employment [S. 1-2]. The purpose of the action, insofar as here relevant, was to enjoin the County's enforcement of its requirement that its employees execute a "Loyalty Oath," hereinafter described, on the grounds that the requirement violates the First and Fourteenth Amendments to the Federal Constitution, and to secure a declaratory judgment that the requirement so violates the Constitution [S. 13-14].

The undenied allegations, insofar as here pertinent, are that in August, 1947, the Board of Supervisors of Los Angeles County, who are among the respondents, adopted a program for the enforcement of a "loyalty check" among all County employees and established a Committee of four County officials, who are likewise respondents, to enforce the program [S. 3, 4, 15-17]. The loyalty check program provided *inter alia* that all County employees be required to execute a specified Loyalty Oath [S. 51], hereinafter described, which petitioner has refused to execute [S. 32]; the Board of Supervisors through one of its members has announced that any employee refusing to execute the required Oath will be discharged and the Committee appointed by the Board has threatened and will, unless judicially restrained, cause any employee so refusing to be discharged or otherwise penalized in employment [S. 4].

The Loyalty Oath.—The County's requirement that the Oath be executed applies to all of the approximately 20,000 County employees, who are divided into some 80 departments, such as Agriculture, Charities, Courts, Health, Library, Parks, Pound and Roads.[2] The portion of the Loyalty Oath here in controversy, hereinafter termed the Organizations Oath, requires the employee to swear or affirm as to whether or not he has ever been a member of, directly or indirectly supported, or followed any of 144 listed organizations and two publications [S. 18-23]. The County's purpose in requiring execution of the Oath was to aid it in determining whether there were any "Communists, avowed or otherwise" in its employ [S. 15] and whether the employee was "an advocate of subversive or Communistic doctrines" [S. 17]. The County officers who

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[2]See Ordinance No. 4935, N. S. (effective July 1, 1947), of County of Los Angeles.

devised the Oath for the Board of Supervisors stated that the list of organizations as to which disclosure is required was compiled on the basis of the organizations "mentioned" in the reports for 1943, 1945 and 1947 of the Joint Fact-Finding Committee on un-American Activities of the California State Legislature, known as and hereinafter termed the Tenney Committee. The County officers indicated that the listed organizations may have "publicly alleged purposes which have every appearance of being patriotic and worthy" [S. 16] and stated that:

> "A careful reading of the Tenney reports will disclose that there are instances in the reports where organizations are named, but it was not claimed by the Fact Finding Committee that such organizations were in themselves subversive, but that subversive or Communistic organizations were endeavoring to place such organizations under their influence. We believe, however, that in ferreting out Communism, it is a practical approach to start with the organizations which are known to exist for the purpose of overthrowing our government, or are known to be subversive or Communistic, and then give careful consideration to such other organizations as the reports of the Joint Fact-Finding Committee of the California Legislature indicates might have come under some subversive or Communistic influence." [S. 16.]

The list includes all types of organizations: labor unions, such as the American Communications Association [S. 18], the Federation of Architects, Engineers, Chemists and Technicians [S. 20] and the United Federal Workers [S. 22]; young people's organizations such as American Youth for Democracy [S. 19], the American Student Union [S. 19], and the National Students League [S. 22]; a veteran's organization, the American Veterans' Com-

mittee [S. 19]; political organizations, such as the Farm Labor Party [S. 20] and the Progressive Committee to Rebuild the American Labor Party [S. 22]; organizations dealing with civic affairs, such as the Hold the Price Line Committee [S. 21], the Citizens Committee for Better Education [S. 19], and the League of Women Shoppers [S. 21]; organizations concerned with racial problems, such as the Citizens' Committee for Defense of Mexican-American Youth [S. 20], the National Negro Women's Council [S. 22], and the National Negro Congress [S. 22]; and organizations dealing with foreign or international affairs, such as the American Committee for a Free Indonesia [S. 18], the American Council on Soviet Relations [S. 19], the American Friends of the Chinese People [S. 19], and the American League Against War and Fascism [S. 19]. Two publications, the Daily Worker and the New Masses, are also included [S. 20, 22]. There is no change in the phraseology of the Oath in connection with their listing; under its terms the employee must disclose whether he has ever purchased or read these publications.

The list of organizations incorporated in the Oath contains a citation for each organization to that portion of the Tenney Report in which it is discussed; our consideration in the succeeding paragraphs of the grounds for the County's listing of the various organizations is based upon these citations.[8]

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[8]As in the list of organizations incorporated in the Organizations Oath, the 1943, 1945 and 1947 Tenney Committee Reports will be cited as "43," "45," and "47" respectively, followed by a dash and the pertinent page number. A check of the list shows some obvious misprints, such as "425" opposite the listing of the American Committee for the Protection of Foreign Born, instead of "45." Correction has been made for such misprints and they will not be noted. A set of the Tenney Committee Reports has been deposited with the Clerk for the convenience of the Court.

The basis for the Tenney Committee's unfavorable view of an organization and for the County's listing of it is in the majority of cases an inference as to the character of the organization from the character of an individual or individuals connected with it; frequently the character of the individual has in turn been inferred from his connection with another organization, and the character of that organization inferred in turn from the character of associated individuals, the inferential chain leading to the conclusion as to the character of the listed organization varying in length. Thus, for example, the data respecting the Progressive Committee to Rebuild the American Labor Party [S. 22] and a number of other organizations[4] is that they were organizations to which one Rathborne belonged, who was once President of the American Communications Association. A speech of Rathborne's had been recommended to members of a union which the Tenney Committee alleged was Communist-dominated, by the union's publication, and though the Committee states that Rathborne "for a brief time resisted the efforts of Communists to penetrate his union" he was "closely associated with many Communist party functionaries and members." Rathborne once attended a meeting of an unspecified but "significant" nature with another labor leader, the Labor Director of the Communist Party, and a high official of one of the organizations deemed by the Committee a "Communist front" [all 47—210].

It is to be noted that here, as is generally the case throughout the Tenney Reports, no attention is given in

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[4]Namely, the Citizen's Committee to Free Earl Browder [S. 20]; Council for Pan-American Democracy [S. 20], Congress of Mexican and Spanish-Mexican Peoples of U. S. [S. 20], Committee for Support of S. N. Gerson [S. 20], National Emergency Conference [S. 22], and the Committee Protesting Attacks Against the Abraham Lincoln Brigade [S. 20].

the series of inferences to the time interval between the person's connection with one organization or person, from which his suspicious character is inferred, and his connection with another from which the adverse inference as to the latter is drawn. It is also to be noted that the Tenney Committee may not attempt to reconcile inconsistencies in its information as to the person's sympathy with Communists, as in Rathborne's case, but nevertheless bases an inference as to an organization on his connection with it. The data on which is based the listing of the American Communications Association, which is an organization implicated in the series of inferences respecting Rathborne and the organizations with which he was affiliated, likewise illustrates the process of inference from character of the person to character of the organization and back again. Thus, the incriminating items respecting the American Communications Association are its leadership by Rathborne [47—173; 47—210]; the fact that the chairman of one of its locals served on the faculty of the People's Educational Center, which the Committee deems Communist-dominated [47—72]; and that an ex-Communist stated that in 1937 the Association was represented at a Communist Party Trade Union week-end school [43—141]. Similarly, the same type of inference is utilized respecting the National Council on Soviet-American Friendship and the National Federation for Constitutional Liberties; there the adverse data is that "affiliated" with them at an unspecified time and for an unspecified period was one Flaxer who had been president of a union deemed by the Tenney Committee to be a "Communist front group" [47—219].[8]

[8] In a few cases an inference as to an organization is drawn from the connection with it of an alleged Communist Party member; thus, the data cited as to the Abraham Lincoln Brigade is that a Communist Party member fought in that Brigade in Spain [S. 20; 43—140]. However, more frequently the allegation as to the individual's character is of the less specific type illustrated in the text.

Despite the Tenney Committee's extensive reliance on inferences as to organizations from the character of persons connected with them, the Committee dismisses as insignificant the fact that persons concededly wholly beyond suspicion are connected with a suspected organization, regardless of the importance of their connection. Thus, the Committee finds it "amazing," but apparently not significant as to the California Labor School's character, that the School [S. 19] has joined in programs with the non-suspect University of California and that the Dean of the University's Extension Division and numerous other non-suspect persons are among the School's sponsors and faculty members [47—88, 89]. And despite this element of confusion about the School, and though the University is not listed as suspect because of its connection therewith, the American Russian Institute is listed [S. 19] because persons from the Institute taught at the School and its director was President of the Institute [47—88, 103]. Association with the People's Educational Center is similarly treated. The Committee considers it of adverse significance that the faculty included individuals who had some Communist connection, though the connection in some cases is as tenuous as that the teacher was the brother of someone prominent in alleged "Communist front" organizations; however, the fact that the faculty also included a Federal District Court judge and a number of non-suspect University of California professors [see 47—95] is passed over [47—71].

In some instances the inference about the organization is based on its connection with another organization, with-

out the involvement of any individual. Here too, the connection may be of the most fragmentary nature. Thus, the Humanist Society of Friends [S. 23] is charged with having been the recipient in 1934 of a distribution of a publication attacking the Hearst press which had been put out under the direction of the Communist Party [43—119]. Similarly, the data against a number of organizations[6] is that they had received a mailing list of persons who might be interested in receiving their literature, from other organizations characterized as Communist fronts [47—55, 56]; and one organization was said during World War II to be closely associated with a "Nazi front" organization and "created by associates" of the Secretary of one of them [43—259].

While the Committee frequently, as in the case of most of the organizations above-discussed, mentions the organization unfavorably but without attempting to formulate a conclusion as to its character, in a number of other instances it characterizes the organization but without mention of supporting data. Thus, with reference to the American Artists Congress [S. 18] the County cites the Tenney Committee's quotation of a report of the California State Federation of Labor stating that the Congress has been "identified" by the Tenney Committee "as a Communist-sponsored organization" [S. 47-81, 82]. And a number of organizations are merely said to be "noted for their pro-Soviet and pro-Communist tendencies" [47—

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[6]The Elizalde Anti-Discrimination Committee [S. 20], Hold the Price Line Committee [S. 21], American Committee for a Free Indonesia [S. 18], Citizens Committee for Better Education [S. 19].

202].[7] In some cases a witness merely stated that he regarded the organization as a Communist front; thus, the only data about the American Federation for Political Unity [S. 19] is that a witness said it was headed by someone whom she regarded as "taken over . . . by the Communists" [43—96].

A number of organizations addressed to minority rights are mentioned as "among the Communist front organizations for racial agitation" [47—45].[8] The only support for the conclusion that this is their true character is the Tenney Committee's view that the "fomenting of racial prejudices and antagonisms is an important tactic in the Communist Party . . . technique"; thus though an organization purports to champion minority rights, it should instead be regarded as existing "to intensify racial antagonisms" [47—45]. The only data indicating that

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[7]These are the Coordinating Commission to Lift the Embargo [S. 20], Joint Committee for Trade Union Rights [S. 21], National Federation of Constitutional Liberties [S. 22], American Committee for Democracy and Intellectual Freedom [S. 18], Refugee Scholarship and Peace Committee [S. 22], Emergency Committee to Aid Spain [S. 20], Emergency Trade Union Conference to Aid Spanish Democracy [S. 20], Harry Bridges Defense Committee [S. 21], Committee for Boycott Against Japanese Aggression [S. 20], Committee to Defend America by Keeping Out of War [S. 20], and the American Council on Soviet Relations [S. 19]. We have omitted organizations which are grouped with these in this passage of the Report, but about which there is additional data in the Reports.

[8]These are the American Committee for the Protection of Foreign Born [S. 18], American Committee to Save Refugees [S. 18], Joint Anti-Fascist Refugee Committee [S. 21], American Friends of the Chinese People [S. 19], First Congress of Mexican and Spanish-American Peoples of U. S. [S. 21], Jewish Peoples Committee [S. 21], League of Struggle for Negro Rights [S. 21], National Committee to Abolish the Poll Tax [S. 21], and National Negro Women's Council [S. 22].

these organizations were "Communist fronts" other than the inference from their interest in minority rights, is, in the case of one of them, the American Committee for the Protection of the Foreign Born [S. 18], that two suspected persons are connected with it, though the suspicion as to these individuals in turn is based in part on their connection with the organization [47—202, 47—219].

In a few exceptional cases the organization's work has been considered in some detail in that its publications have been studied to show that its position on international affairs reflected Soviet Russia's changing foreign policy,[9] or that it manifested an opposition to Fascism and not to Communism.[10]

Aside from a few such exceptional cases the condemnation of the organization is based on inference from association of the type already described: that is, inference from the connection with the organization of some person or persons claimed to be associated with a Communist or

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[9]As in the case of excerpts from publications of the Federation of Architects, Engineers, Chemists and Technicians [47—204-207].

[10]As in the testimony with respect to the Mobilization for Democracy [47—49].

The 1948 Tenney Report, which was issued after the compilation of the County's Organizations Oath list, includes the American Civil Liberties Union as a Communist front organization. This characterization is based mainly on the allegation that its legal efforts are largely on behalf of Communists; the Committee thus ignores the Union's activity in behalf of civil liberties for all groups including those who attack Communists (See Brief of American Civil Liberties Union, as *amicus curiae*, in this Court in *Terminiello v. Chicago*, No. 272, October Term 1948. The Committee also concludes, for no apparent reason, that the Union's policy announcement that a Communist could not genuinely believe in civil liberties was merely a "Communist strategy" on the part of the Union.

with another organization charged in similar manner with having a Communist taint. Except for whatever inference may be drawn from sympathy with Russia on the part of the very few organizations manifesting such sympathy, and except for the Communist Party, the Communist International, and the Communist Political Association, there is no indication or allegation of any sort that any of the listed organizations either covertly or overtly advocated, advised, or in any way espoused or believed in overthrow of the government by force or violence or in any other illegal or anti-democratic practice.

Opinions Below.

The District Court of Appeal, affirming the Superior Court's judgment and incorporating the latter's opinion in its own, upheld the County's requirement that all of its employees execute the Organizations Oath disclosing whether or not the employee had ever had any association with, or followed, any of the 144 listed organizations and two periodicals.[11] The Court rejected petitioner's arguments that the compulsion to so account for association or "following" violated her rights to freedom of speech, press, assembly, and belief as guaranteed by the State Constitution and the First and Fourteenth Amendments to the United States Constitution [P. 56, 61-62]. The Court

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[11]The Court likewise upheld the requirement of execution of the Oath respecting membership in organizations advocating overthrow of the government by force and violence; the validity of that Oath is not being contested by petitioner.

upheld the constitutionality of the County's requiring its employees to execute the Oath on the basis of the State's power to require persons, as a condition of their employment by the Government, to refrain from advocacy of overthrow of the government by force and violence and its consequent power to require them, as a condition of employment, to make disclosures relative to such advocacy [P. 51-52, 55-56].

The opinion of the Superior Court, incorporated in the District Court opinion, held that the County's requiring execution of the Oath as a condition of employment did not contravene the State and Federal guarantees of freedom of speech, opinion, press, and assembly [P. 60-61]; it relied largely on this Court's decision in *United Public Workers v. Mitchell*, 330 U. S. 75, quoting that part of the opinion which refers to the constitutionality of prohibiting active participation in politics for the sake of efficiency of governmental service [P. 62-63].

Specification of Errors.

The District Court of Appeal erred in holding that the County's requirement that petitioner execute the Organizations Oath, which necessitates disclosure of association with, or following of, 144 organizations and two periodicals, was not a violation of her rights to freedom of speech, press, assembly, and belief under the First and Fourteenth Amendments to the Constitution of the United States.

Summary of Argument.

I.

A. The Organizations Oath requirement, forcing disclosure of all contact with the 144 listed organizations and two periodicals, must be held unconstitutional unless the restraint it imposes on First Amendment freedoms is no greater than that necessary to accomplish the State's objective, even assuming the validity of the latter. The Organizations Oath utterly fails to meet this test, which has been established as basic in First Amendment cases by this Court's holdings. It is evident from the County's own statements that the broad impairment of First Amendment freedoms effected by the Oath was not necessary to accomplish the County's professed objective of determining whether any of its employees advocate overthrow of the government; the Oath procedure is at best an easy and convenient blunderbuss, rather than a narrowly drawn measure such as the Constitution commands when First Amendment rights are involved.

The effect of the Organizations Oath requirement clearly is to coerce County employees and potential employees not to engage in the associations or beliefs about which they must thereunder render an accounting and disclosure to the State; for subjection to the obligation to account, like subjection to censorship, necessarily deprives the citizen of full freedom of choice and constrains him to direct his beliefs and activities into channels that seem likely to be approved. Even if only the organizations on the present Oath list are considered, the coercion of the Oath requirement extends to association with organizations dealing with practically all political, social and economic questions of current interest and to all types of organizations from

youth groups to trade unions; and the organizations include many which the County concedes not only have avowed lawful and worthy purposes, but which, even under the ill-founded Tenney Committee conclusions, can be charged with nothing worse than that an allegedly Communist tainted organization or individual was attempting to gain influence over them. The coercion of the Oath reaches not only to all types of association with these organizations but to "following" the views expressed by them as well. And clearly, no organization venturing to entertain or study a nonconformist viewpoint is safe from the accounting requirement in view of the lack of standards the County has utilized in compiling the present Oath list. Thus, as in the case of other broad and uncircumscribed assertions of power affecting First Amendment rights, the Oath in reality restrains the free exercise of the rights in all the respects that are within the range of the asserted power; in the instance of the Oath the power, and thus the restraint, encompasses the freedom to assemble and hold beliefs relative to any minority view.

Freedom of the press is likewise affected over a broad field, for the power exercised in the Oath to require an accounting as to reading of the listed publications would necessarily constrain the employee in his choice of all reading matter of an unorthodox nature. Further, since freedom of speech and the press are, as this Court has recognized, necessarily impaired by restraint on the right to assembly, the full effect of the Organizations Oath requirement is to destroy not only freedom of press, assembly, and belief, but freedom of speech as well with respect to all minority or non-conformist thought.

Close scrutiny of the justifiability of the Oath is necessary not only because of its extremely broad impairment

of First Amendment freedoms, but also because the impairment is effected by a procedure which is itself uniquely dangerous to the sacrosanct principle of freedom of belief and in contravention of principles deemed by this Court basic to fairness and individual security. For an inquisitional Oath, which is here brought to its full fruition in a searching canvass of all minority association and sympathy, is a unique weapon for the ascertainment of belief. And in the field of belief and expression an inquisition such as that embodied in the Oath has all the evils of an indiscriminate and unreasonable search. Further, validation of the Oath would mean that the State can force a citizen to establish his innocence, though it has no information as to his culpability, and require him to reveal initial evidence of guilt, in order to supply the State with a basis for initiating proceedings against him.

In view of the extent to which the Oath impairs, and indeed, contrary to this Court's doctrine, directly conditions, the free exercise of First Amendment rights, and in view of the vices of the inquisitional device, the only justification for the Oath requirement—that it may be more convenient to establish and administer than a more narrowly drawn procedure—is insufficient support for the County's choice of this means for determining employee advocacy of force and violence. Such an all-encompassing Oath could be deemed constitutional, if at all, only in the event of such an extreme emergency that constitutional standards as to reasonableness in the selection of method and reasonable balance between democratic liberties and

the needs of the State, might be abandoned. No such emergency as to threatened overthrow of the Government by County employees has been shown, or even alleged, to exist.

B. The Oath requirement is not only unconstitutional because it is an unjustifiable method of achieving the County's objective, but also because the objective taken in its full breadth itself contravenes the guarantees of freedom of belief and speech of the First and Fourteenth Amendments. In upholding the Oath as a means for the ascertainment of employees who advocate overthrow of the government by force and violence, the State Court completely ignored the doctrine that the right to free belief and expression must be preserved unless there is a showing of necessity for its curtailment in order to prevent the imminent occurrence of serious evil to the State. Under this doctrine, which must on the basis of authority and principle be held applicable to the advocacy of force and violence, the Oath cannot be deemed directed at a valid objective; for the State Court did not, any more than the County, distinguish between a theoretical belief in ultimate and distant action which could not possibly be deemed to pose any imminent danger to the State, and advocacy which might present such a menace. Instead, mere belief or expression relative to any use of force or violence to overthrow the government was deemed subject to suppression as anathema. If it be said that evils other than overthrow might be thought to result from, or coincide with, belief by government employees in even an ultimate

resort to force and violence, the answer is that no such evils have been suggested by the County; and that, in any event, if evils like inattention to duty were deemed characteristic of persons holding such a belief, concrete problems of efficiency must be dealt with by narrower measures than general suppression of belief and speech. Belief and expression *per se* cannot, as the State court seemed to believe, be used as the criterion of fitness for government employment.

C. The State Court erred in its apparent view that the Oath requirement should not be judged by the above-discussed Constitutional standards because it was imposed on government employees. The view that the State has arbitrary power, free from Constitutional limitations, to condition government employment, indubitably must be rejected in view of this Court's holdings that the grant of a privilege cannot be conditioned on the surrender of Constitutional rights. When the State conditions employment and favorable terms of employment, both obviously of substantial value, upon compliance with its requirements, it clearly is exercising compulsion, and utilizing an important sanction, to obtain such compliance. Thus, the Constitutional limitations on the State's power imposed by the First and Fourteenth Amendments are fully as applicable to the Organizations Oath requirement as if a criminal sanction, or any sanction other than penalization in employment, had been used to enforce execution of the Oath.

II.

The issue of the constitutionality of the Organizations Oath requirement was properly accepted by this Court for adjudication in the face of respondent's contention that the State court's decision rested on the non-Federal ground that no question as to the County's power to discharge its employees was ripe for adjudication. There can be no doubt that the State court intended to and did adjudicate the issue of the validity of State compulsion, by discharge or other penalization in employment, to enforce execution of the Oath; the determination of the validity of such compulsion was clearly necessary to the disposition of the cause, and a necessary basis for the State court's decision.

As to respondent's contention that no justiciable controversy is presented by this cause, the major criterion as to the existence of a controversy is clearly satisfied in the case at bar; for the issue to be here adjudicated and the remedy here required are clear, specific, and narrowly defined and are in no sense hypothetical or speculative.

Further, under established doctrine petitioner clearly has a justiciable controversy with the County because she has a real and pressing need to know whether she has a constitutional right to continue to disobey the Oath requirement or whether she must comply in order to avoid the risk of sanctions. Particularly in the light of the decision of the California courts upholding the validity of the Oath requirement, there can be no doubt as to its immediate enforcement and as to the fact that petitioner is thus immediately confronted with the necessity for sacrificing her asserted constitutional rights or risking the very serious penalty of loss of livelihood.

ARGUMENT.

I.

The County's Requirement That Its Employees Execute the Organizations Oath Is an Unconstitutional Abridgment of the Freedoms of Speech, Press, Assembly and Belief Guaranteed by the First and Fourteenth Amendments to the Constitution.

Petitioner is limiting its attack on the County's requirement that its employees execute the Organizations Oath to the ground that the requirement of an accounting and disclosure on the matters specified in the Oath is unconstitutional *per se*, without regard to the County's program for use of the disclosures. While we concede that the issue of the validity of future phases of that program may not be adequately presented in the case at bar, we believe it clear that the issue of State compulsion to execute the Oath is clearly and properly presented by the instant record (see Point II). As to this issue we do not of course deny the County's contention that it has the power to investigate its employees; we contend, however, that the Organizations Oath is unconstitutional as a method of investigation in view of the unjustifiably broad restraint it imposes on First Amendment freedoms, and the unconstitutionality of its objective in the light of the guarantees of the First and Fourteenth Amendments. After demonstrating the invalidity of the Oath requirement under established constitutional doctrine, we shall point out the error, as a matter of both precedent and logic, of the California Court's views that the State has special power, free from the usual constitutional limitations, to impose the requirement because the persons affected thereby are its employees, and that the Oath may be specially justified under the State's power to determine the fitness of its employees.

A. The Organizations Oath Requirement Is Unconstitutional Because, Even Assuming Arguendo the Constitutionality of Respondents' Objective, the Oath Requirement Is an Unreasonable Method of Achieving It.

The Oath requirement must be held unconstitutional under this Court's established doctrine that when "regulations . . . in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions" as are the First Amendment rights, this Court not only gives careful consideration to the substantiality of the alleged evil at which the regulation is directed, but also to the justification for the choice of "one rather than another means for combatting" it.[12] As we shall show the Oath effects a drastic suppression of First Amendment rights; nevertheless, under the County's own statement of the reasons for its adoption, its broad and extreme character is unjustified. It is in no sense a procedure "narrowly drawn to meet the supposed evil," and thus must fall under the basic test for the constitutionality of measures affecting the First Amendment freedoms.[13]

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[12] *Thornhill v. Alabama*, 310 U. S. 88, 95, 96. The unanimous decision in *Schneider v. State*, 308 U. S. 147, well exemplifies this doctrine. There this Court expressed its cognizance of the need for the municipalities to keep the streets clean and prevent fraud, but held the regulation there involved unconstitutional on the basis that this objective did not justify the drastic interference with freedom of the press which the regulation caused. It was pointed out, however, that other means to achieve the same end, but creating less interference with First Amendment rights, would be constitutional. To the same effect, see cases cited *infra*, note 31.

[13] *Cantwell v. Connecticut*, 310 U. S. 296, 307. To the same effect, see cases cited *infra*, note 31.

1. THE COERCIVE EFFECT OF THE REQUIREMENT TO RENDER AN ACCOUNTING TO THE STATE OF ASSOCIATIONS AND BELIEFS.

The first question before this Court in adjudging the constitutionality of the Organizations Oath is "how much, as a practical matter, . . . (it) would affect liberty of expression." *Bridges v. California*, 314 U. S. 252, 268.[14] It cannot be doubted that the effect of the Oath requirement is to coerce County employees and potential employees not to engage in the associations or beliefs about which they must thereunder render an accounting and disclosure to the State. This Court has taken full cognizance of the restraint the State imposes upon First Amendment freedoms when it requires submission to an inquisition as the condition of their exercise. Thus, with respect to the distribution of religious pamphlets, this Court declared that mere submission to "a burdensome and inquisitional examination," and to "the officer's discretion" as to whether or not pamphlets could be distributed, regardless of whether the discretion was exercised in the applicant's favor, "makes impossible the free and unhampered distribution of pamphlets (and) strikes at the very heart of the con-

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[14]For, "In every case . . . where legislative abridgment of the rights (protected by the First Amendment) is asserted, the courts should be astute to examine the effect of the challenged legislation." *Schneider v. State*, 308 U. S. 147, 161. To the same effect, see *Martin v. Struthers*, 319 U. S. 141, 144; *Thornhill v. Alabama*, 310 U. S. 88, 97.

The effects of the Oath requirement which petitioner will herein discuss are those which *necessarily* result from its imposition and thus render it unconstitutional upon its face, rather than those which may arise from its application to particular facts of individual cases. Petitioner undoubtedly can raise the question of the requirement's unconstitutionality upon its face, because she is one of those directly affected by it, as well as because of the particular attention given in First Amendment cases to this type of unconstitutionality. Compare *Cantwell v. Connecticut*, 310 U. S. at pp. 308, 311; *Thornhill v. Alabama*, 310 U. S. at p. 97; *Thomas v. Collins*, 323 U. S. 516, 531; *Murdock v. Pennsylvania*, 319 U. S. 105.

stitutional guarantees" (*Schneider v. State*, 308 U. S. at p. 164). And see *Murdock v. Pennsylvania*, where the dissenting Justices, though disagreeing with the majority view that the tax there involved abridged freedom of the press and religion, defined freedom as "a privilege to print or pray . . . without accounting to authority for one's act" (319 U. S. 105, 122).[14a]

For subjection to an inquisition is essentially the same in nature and in its restraining effect as subjection to censorship, which it was the major purpose of the First Amendment to prohibit.[15] Like censorship it is a submission of thought, speech, or association to official scrutiny and possible disapproval and, like censorship, its evil effect lies in the "pervasive threat" of official disfavor.[16] *Thorn-*

[14a]Justices Roberts, Frankfurter, and Jackson joined in a dissent by Mr. Justice Reed. Compare *Electric Bond and Share Co. v. S.E.C.*, 303 U. S. 419, 441, where this Court assumed without question that freedom from the requirement of disclosure of business data was a constitutional right and that such a requirement was unconstitutional unless reasonably related to a constitutional objective.

[15]*Near v. Minnesota*, 283 U. S. 697, 713.

[16]In the case of the County's Oath it is to be noted that there is not only the implicit threat inherent in every inquisition that disclosures may be used to the citizen's detriment, but that the County has explicitly asserted its power to so use them. Regardless of the precise effect to be given to disclosures, the County has stated that they are to be used in a determination of whether the citizen is "subversive"; and the wording of the Oath with its citations of the Tenney reports, indicates the County's viewpoint, even aside from the County's declarations. Moreover, the citizens upon whom the requirement of disclosure is imposed are a group who have special reason to fear adverse appraisal by the County since it has direct control over their employment. And the fact that the disclosures are to be appraised on the basis of such a meaningless standard as "subversive," a term which indeed has no more exact meaning than that the belief is indignantly condemned as inconsistent with a belief held to be important by the condemnor [see Clark, J., dissenting, in *Josephson v. United States*, 165 F. 2d 82, 96 (C. A. 2d, 1947) (cert. den. 68 S. Ct. 609), as to the vagueness of this term] intensifies the coercive effect of the accounting requirement, for the citizen is laid open to a completely arbitrary condemnation of his beliefs.

The fact that the Oath is administered by executive officers who have the power to act against individuals of course distinguishes this accounting from any that might be legislatively required.

hill v. Alabama, 310 U. S. at p. 98. For "the power of the licensor . . . is pernicious not merely by reason of the censure of particular comments but by reason of the threat to censure comments on matters of public concern" (*ibid*); it is this threat which, generating efforts to escape the potential impact of the State's disapproval, coerces conformity to the censor's standards and suppresses freedom of expression. And it is precisely in the same manner that the County's Organizations Oath requirement restrains First Amendment freedoms. It cannot be doubted that the citizen is deprived of freedom of choice in his associations and beliefs when he lives under the realization of his liability to account for them to the State; the realization exercises a constraint upon him to direct his activities and beliefs into channels which are likely to be approved. An inquisition is thus particularly effective as a restraint upon adherence to minority political or social views, which are the focus of the Organizations Oath; the mere exposure of the fact that one possesses such views is cause for apprehension, and in their regard "no one denies that the inquest is an effective instrument of restraint."[17]

2. Breadth of Effect of Organizations Oath Requirement.

As to the extent of the area over which the Oath restrains freedom of assembly, as well as the freedoms of speech, press and belief, which as we shall show below are also involved, it is not an exaggeration to say that the

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[17] Judge Edgerton dissenting in *Barsky v. United States*, 167 F. 2d 241, 260 (App. D. C., 1948), cert. den. 68 S. Ct. 1511. Compare *Utah Fuel Co. v. Bituminous Coal Commission*, 306 U. S. 56, 60, where a requirement to disclose business data was enjoined; compare also *Indianapolis Power & Light Co. v. National Labor Relations Board*, 122 F. 2d 757, 760 (C. A. 7th), cert. den. 315 U. S. 804, and *Botany Worsted Mills v. N.L.R.B.*, 106 F. 2d 203, 207 (C. A. 3rd), where employer interrogation of employees as to union membership was deemed an obvious and flagrant coercion of them not to join the union.

coercive effect of the Oath extends to virtually all social, economic and political issues.[18] The list of organizations about which an accounting must be rendered covers practically all subjects of current or recent public interest; as to all public issues, therefore, the employee must guard his position in the light of his accountability to the State. And no type of organization is exempt: the list includes all types, from youth organizations to trade unions to political parties. This dragnet list of organizations is based on their "mention" by the Tenney Committee, no matter how casual or ill-considered that mention might have been (see *supra*, Statement of Facts, pp. 4, 6-12). And it is to be noted that despite the Committee's casualness in its charges and conclusions, none but 3 or 4 of the 144 organizations on the List were even alleged or indicated by the Committee either to overtly or covertly advocate forceful overthrow of the Government or promotion of any other unlawful objective (Statement of Facts, *supra*, p. 12). Furthermore, the County itself concedes that the list includes organizations which must be presumed to be entirely devoted to their declared civic aims, for it states that some were mentioned merely because "subversive or Communistic organizations were endeavoring to place (them) . . . under their influence" [S. 16].

Moreover, no type of contact with the organizations is free from the disclosure requirement. The inquisition

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[18]While there is no subject of expression or thought which will escape the suppressive effect of the Oath, its especial emphasis on political questions means that the First Amendment freedoms will be restrained in their most important respect. See *Winters v. New York*, 333 U. S. 507, 517, 518. For the primary purpose of the constitutional guarantees of free speech is that "government may be responsive to the will of the people and that changes may be obtained by lawful means." *Stromberg v. California*, 283 U. S. 359, 369; *DeJonge v. Oregon*, 299 U. S. 353, 365; *Terminiello v. Chicago*, 337 U. S. 1.

penetrates to support, even "indirect," and "following" of the organizations; and though the citizen is completely innocent even of knowledge of whatever might be deemed "subversive" about the organizations, as the Tenney Committee admitted was true even of many of their important associates (see references cited in Statement of Facts, *supra*, p. 8), he does not escape the obligation to account. One final aspect of the Oath is to be noted: the required accounting covers one's entire lifetime. This feature undoubtedly contributes greatly to the restraining effect of the Oath upon freedom of association; for the citizen cannot undertake an association without assuming the risk of having to disclose it to the State in the indefinite future and under unpredictable circumstances or changes of fortune. In sum, the Organizations Oath deprives the employee of freedom to associate with organizations which are covertly as well as overtly, in good faith and unreservedly, devoted to a lawful and public-spirited purpose, and even though his association with them is solely for that purpose.

The effect of the Oath requirement would undoubtedly extend further than to the deterrence of association merely with the listed organizations. It is safe to say that validation of the Oath would deter belief in or association with all organizations, including, especially, new movements, and even informal discussion groups. Clearly there can be no sense of assurance that *any* organization might not be included in the County's list, judging from the broad sweep of the present list, and the County's own declaration that it has included organizations without so much as attempting to ascertain whether or not they fitted even the loose standard of "subversive." Thus, like other poorly circumscribed exercises of power affecting First Amendment freedoms, the power expressed in the Oath require-

ment "blankets with uncertainty," and thus impairs, the right to participate in any type of assembly. *Thomas v. Collins*, 323 U. S. 516, 535.[19] The State's power here asserted is of such breadth that it "offers . . . security" (*ibid*) only through abstinence from associations other than those explicitly approved by the County.

It is clear, too, that the deterrent effect of the Oath upon the free exercise of the right of assembly is not limited merely to present County employees but extends, though in a lesser degree, to all potential County employees, and thus to a substantial portion of the citizenry of the County.[20] Even the freedom of adolescents and youths is affected, for the County asserts the right to require an accounting of membership in high school and college associations (see Statement of Facts, *supra*, p. 4); those

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[19]See also *Saia v. New York*, 334 U. S. 558, 562, and cases there cited: *Cantwell v. Connecticut*, 310 U. S. at p. 307; *Winters v. New York*, 333 U. S. at pp. 509-10; *Carlson v. California*, 310 U. S. 106, 112. For like a broad penal statute which "sweeps within its ambit . . . activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press," the existence of a measure based on a broad assertion of power "which readily lends itself to . . . enforcement . . . against particular groups deemed to merit . . . (official) displeasure results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview. It is not any less effective than the restraint on freedom of discussion imposed by the threat of censorship." *Thornhill v. Alabama*, 310 U. S. at pp. 97-8. The pervasive effect of the power asserted in the Oath requires this Court's consideration in determining whether the Oath unconstitutionally invades First Amendment freedoms to the same extent as the immediate effect of the existent Oath list. *Ibid.*

[20]As the Supreme Court of California declared in disapproving the requirement of an oath of non-subversiveness as a condition for the holding of meetings in public schools: "Its principal effect is to discourage certain convictions and affiliations" on the part of all who may wish to hold such meetings. *Danskin v. San Diego Unified School District*, 28 Cal. 2d 536, 564.

who foresee the possibility of needing to seek County employment must have an eye for State inspection of their associations from the inception of their sentient years. Indeed, validation of the Oath requirement would result in the curtailment of the liberties of the entire citizenry, for it would inevitably cause apprehension of its extension to other employments where its use could be justified on similar grounds to those herein advanced respecting County employees.[21]

Range of First Amendment freedoms affected by the Oath—The Organizations Oath impairs the free exercise of the right to assembly not only by virtue of the coercive effect of its requirement to account for contact of any sort with the interdicted organizations; in addition, its heavy reliance on the doctrine of guilt by association, both in its basic justifying premise that association is evidence of individual culpability and in its listing of organizations which were "mentioned" by the Tenney Committee solely because of tenuous inferences from associations,[21a] is another forceful deterent to assembly. For the obligation of answering for the beliefs of one's associates is a burden which cannot but hinder and suppress the free exercise of the right to assemble. Furthermore, the imputation of guilt from association likewise affects the right to free

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[21]Compare *O'Brian*, Loyalty Tests, 61 Harvard Law Rev. (1948) 592, 608; Judge Edgerton dissenting in *Barsky v. United States*, cited *supra*, note 17, at p. 255. See *Ex parte Cummings*, 4 Wall. 277, and *Ex parte Garland*, 4 Wall. 330, where this Court condemned the post-Civil War imposition of loyalty Oaths upon numerous professions, including teaching, preaching, and practising law; the dissenting Justices considered the Oath particularly justifiable for practitioners before this Court (4 Wall. at p. 386).

[21a]See discussion in *Bridges v. Wixon*, 326 U. S. 135, 143-148, of the unfairness and unpersuasiveness of such inferences in relation to "Commun..." associations.

speech. As this Court by Chief Justice Hughes, with only one dissenting vote, said in the *DeJonge* case:

> "The question, if the rights of free speech and peacable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects."
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> *DeJonge v. Oregon*, 299 U. S. 353, 365.

Indeed, to the extent that the Oath requirement impairs freedom of assembly, there is a *pro tanto* impairment of freedom of speech and press. For the "rights to freedom in speech and press . . . with the rights of the people peaceably to assemble and to petition for redress of grievances . . . are inseparable" (*Thomas v. Collins*, 325 U. S. at pp. 530-1) and "cognate" (*DeJonge v. Oregon*, at p. 364). The right to free speech requires for its fulfillment the right to assemble so that the speaker may have the "opportunity to persuade to action" (*Thomas v. Collins*, at p. 537). Clearly, the restraint upon a citizen's right to assemble in organizations dealing with rent control,—to take one example from the Oath list—is likewise a restraint upon his freedom to speak or publish on the subject of rent control or to petition for a redress of grievances with regard thereto, for he cannot be deemed to express himself freely if he cannot do so to an audience of like-minded persons nor is his expression free if he cannot make it effective through joining in movements with his fellows.

Furthermore, freedom of the press is directly impaired by the Oath in that the County asserts the power therein

to hold the citizen accountable for his reading matter. The inclusion of the Daily Worker and the New Masses on the Oath list not only means that the employee is forced to close his eyes to whatever light on controversial issues may be found in these Communist publications, but also that in all his selections of reading matter he must bear in mind his possible accountability therefor.[22]

While the impairment of freedom of assembly, speech, and the press may be most obvious effects of the Organizations Oath, even more significant than these is its effect on freedom of belief. For freedom of belief is the most sacrosanct right in our constitutional system; it is "absolute";[23] "the spheres of intellect and spirit" are to be reserved "from all official control."[24] These spheres are clearly invaded by the County's inquisition into belief and influence on belief by requiring disclosure of what organizations have been "followed." Furthermore, just as a restraint on freedom of assembly may impair freedom of speech (see cases cited *supra*), the fact that the Oath requires an all-encompassing confession to the State of associations relating to the expression of unorthodox views would tend to suppress belief in such views. This tendency is strengthened by the circumstance, which we discuss below, that the inquisitional method of the Oath is traditionally used and peculiarly adopted to forcing a disclosure of beliefs.

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[22]The right to read and support newspapers and magazines to the end that they may be published and circulated is clearly part of the right to freedom of the press. *Martin v. Struthers*, 319 U. S. 141, 143.

[23]*Cantwell v. Connecticut*, 310 U. S. at p. 303.

[24]*Board of Education v. Barnette*, 319 U. S. 624, 642. See *United States v. Ballard*, 322 U. S. 78, 86-7: "Freedom of thought . . . is basic in a society of free men."

3. PERNICIOUS CHARACTER OF INQUISITIONAL PROCEDURE FROM STANDPOINT OF FREEDOM OF BELIEF AND INDIVIDUAL SECURITY.

Not only should the Oath be invalidated because of its "affect" "as a practical matter" on First Amendment freedoms,[28] but also because its inquisitional procedure is, like censorship, to be condemned *per se* as an outlawed procedure under the First Amendment. For, like censorship, inquisition embodies particular and peculiar dangers for First Amendment freedoms; while a man's words or actions may be variously ascertained, it is only through inquisition that the recesses of his mind may be searched, and the sacred "spheres of the intellect and spirit" be invaded. Here the County has indeed used the Oath for the very purpose which has made it feared and condemned: by forcing disclosure of what organizations have been "followed," it seeks to ascertain belief and influence on belief,—facts which could only be ascertained by inquisition. As in the *Cummings* case in which a Test Oath for State employees was condemned, "the oath is directed not merely against overt and visible acts of hostility to the government, but is intended to reach words, desires, and sympathies, also" (*Ex parte Cummings*, 4 Wall. 277, 318). While possession of the sympathies at which the inquisition is directed is not here, as it was in the *Cummings* case, a conclusive disqualification for employment, the Oath requirements are fundamentally the same for in both instances the State has imposed as a condition of employment the requirement that employees submit to an inquisition revealing their associations and sympathies. See

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[28] *Bridges v. California*, loc. cit. *supra*, p. 22.

also *Ex parte Garland*, 4 Wall. 333, 377. Indeed, the County's Oath establishes a broader inquisition than that in the *Cummings* case, for in the latter the subject-matter was limited to connection or sympathy with the Confederacy whereas here the employee is not subjected merely to a few interrogations. Rather the inquisitional oath is here found in its full fruition: for a searching and thorough canvass of activity or sympathy over an all-inclusive range of social, economic, and political issues.

The County's Oath embodies another feature of the *Cummings* oath, which was a major cause of its condemnation by this Court as being "for its severity without any precedent that we can discover" (at 318). For the County's Oath, like the Cummings Oath, "is restrospective; it embraces all the past from this day; and, if taken years hence, it will also cover all the intervening period". (at p. 318). The indefinitely retrospective feature of the County's Oath contributes strongly, as we have already noted, to its suppressive effect on freedom of expression; for it means that there is no terminal point for one's liability to account to the State for one's beliefs and associations.

Principles of Individual Security.—The inquisitional Oath not only strikes at the sacrosanct position in our law of freedom of belief, but also is contradictory to basic principles of individual security. This Court has recently declared that the "security of one's privacy" against invasion by an unreasonable search "is basic to a free society."[20] Certainly the privacy of one's beliefs and their

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[20] *Wolf v. Colorado*, 338 U. S. 25. The due process clause of the Fourteenth Amendment was therefore held to incorporate protection against unreasonable search and seizure. Compare *Brinegar v. United States*, 338 U. S. 160, where the search did not involve a place of privacy.

protection against an indiscriminate and unfounded ransacking by inquisition is as important a part of such security as the privacy of one's residence.[27] Cognate to protection against unreasonable search is the principle of the presumption of innocence. As this Court pointed out with severe condemnation in the *Cummings* case, the inquisitional oaths there used "subvert the presumption of innocence"; "they assume the parties are guilty; they call upon the parties to establish their innocence" (4 Wall. at p. 331). The County Oath requirement is likewise based on such a subversion of the presumption; while the County's view is alleged to be that only some of the County employees are "subversive," the imposition of the Oath on each individual employee is necessarily premised on the presumption that he may be one of the guilty ones, and should therefore be called upon to take the first step in establishing whether or not he is guilty. And in that the inquisition compels the employee to speak, it may well be a harsher measure than a prohibition of speech as to the same matters. Particularly with respect to opinions and associations of a minority nature, where the right to speak only at a time and place of one's own choosing is of particular value, is this Court's statement apposite: "It would seem that involuntary affirmation could be commanded only on even more immediate and urgent grounds than silence" (*Board of Education v. Barnette*, 319 U. S. at p. 633).

A third corollary doctrine of individual security: protection against self-incrimination—is also undermined by the Organizations Oath. In the *Cummings* case this Court

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[27]Compare *Sinclair v. United States*, 279 U. S. 263, 292; *Jones v. S. E. C.*, 298 U. S. 1, 28.

pointed out as one of the pernicious effects of a citizen's being forced to disclose information against himself by an inquisitional Oath that the result of this procedure was "to excite scruples in the honest and conscientious, and to hold out a bribe to perjury."[28] This unfair burden, resulting from violation of the protection against self-incrimination is aggravated in the case at bar by the obscurity of the language of the Oath, which forces the employee to choose between the possibility of a charge of misrepresentation for incomplete disclosure or unnecessary self-accusation for error in the other direction.[29]

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[28]At page 331. The self-incriminating aspect of the oath was the basis for the condemnation by the Supreme Court of Pennsylvania of an oath with respect to allegiance during the Revolution, required shortly after the Revolution as a condition for voting. *Respublica v. Gibbs*, 3 Yates 429, discussed by Field, J., dissenting in *Brown v. Walker*, 161 U. S. 591, 633. Compare *United States v. Collins*, 25 Fed. Cas. 545, 549-550 (No. 14837), C. C., S. D. Ga., 1873, where the Court refused to compel the testimony of a jury official whose selection of the jury was being challenged. The Court based its ruling on the ground that "Where a charge of misconduct is made against an officer, whether amounting to an indictable offense, or only to his discredit as such officer, which might furnish grounds for his removal or impeachment, he is not bound to be a witness against himself . . . An inquisitional examination, under oath, of a party charged with an offense, is repugnant to the principles of personal liberty . . ."

[29]The requirement of revealing what organizations were "followed" "requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Connolly v. General Construction Co.*, 269 U. S. 385, 391. Such a burden is so unfair as to contravene due process of law. *Ibid.* Compare *Lanzetta v. N. J.*, 306 U. S. 451, 453; *Musser v. Utah*, 333 U. S. 95; and as to the effect of vagueness in measures affecting free speech, *Winters v. New York*, 333 U. S. 507 at pp. 509-510.

4. UNCONSTITUTIONALITY OF COUNTY'S USE OF ORGANIZATIONS OATH AS A METHOD OF ACHIEVING ITS OBJECTIVE.

As we have already noted (*supra*, p. 21), it is the firmly established doctrine of this Court that in the case of measures affecting the free exercise of First Amendment rights, the measure must not only be constitutional in its objective but also must employ means to achieve the objective that are justifiable when full account is taken of their effect on freedom of expression. Under this doctrine we submit that the Oath requirement is unconstitutional. For, assuming arguendo that there was justification for an investigation of whether any County employees advocated forceful overthrow of the Government, the County's adoption of the Organizations Oath, with its drastic and sweeping impairment of First Amendment freedoms by a procedure peculiarly obnoxious to the principles of freedom of belief and individual security, was unreasonable.

The County's own statement in justification of the adoption of the Oath is merely that it is "*a* practical approach" to its problem [S. 16]; and there is no indication in the County's argument that it could not have used a method for achieving its objective which would have effected a lesser interference with First Amendment freedoms. In the face of this statement and the flagrantly broadside nature of the inquisition, it is obvious that methods less deleterious to the First Amendment freedoms

could well have been used.[30] Clearly the requirement for all County employees to execute this all-encompassing Oath was not a procedure "narrowly drawn to meet the supposed evil," and thus must fall under the basic test for the constitutionality of measures affecting the First Amendment freedoms.[31] The County obviously made no such deliberative effort to leave room for the free exercise of First Amendment rights as might conceivably furnish justification for the imposition of the Oath. And even if other methods of dealing with the problem might be "less efficient and convenient, considerations of this sort do not empower a municipality to abridge" the First Amendment freedoms. *Schneider v. State*, 308 U. S. at pp. 162, 164. To the same effect: *Cantwell v. Connecticut*, 310 U. S. at p. 307; see also *Thomas v. Collins*, 323 U. S. at 530, 547; *Martin v. Struthers*, 319 U. S. 141, 147.

We deem the holding of these cases precisely in point in the instant case, for at best the County's justification for its drastic and all-pervasive encroachment on the First Amendment freedoms is that it is easier to use the Oath

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[30]The burden clearly is not upon us to delineate such alternative methods in detail. *Cf. Thornhill v. Alabama*, 310 U. S. at p. 98.

[31]*Cantwell v. Connecticut*, 310 U. S. 296, 311.

Similarly, in condemning the statue involved in the *Thornhill* case, this Court said that the measure "does not aim specifically at serious encroachments on these interests and does not evidence . . . care in balancing these interests against the interest of the community and that of the individual in freedom of discussion on matters of public concern." *Thornhill v. Alabama*, 310 U. S. at p. 105. *Semble: Winters v. New York*, 333 U. S. 507, 509, 512; *Saia v. New York*, 334 U. S. 558, 562, 564; *Murdock v. Pennsylvania*, 319 U. S. 105, 116; *Schneider v. State*, 308 U. S. 147, 162.

than other and more precisely circumscribed methods for meeting its objective. Such a drastic procedure as the Oath could be deemed constitutional, if at all, only in the event of such an extreme emergency that constitutional standards as to reasonableness in the selection of methods, and as to a reasonable balance between democratic liberties and the need to preserve the State, might be abandoned.[32] No such emergency with respect to overthrow of the Government by County employees has been shown, or even alleged, to exist. It was not justifiable for the County to restrain expression, belief, and assembly with respect to all minority views and all current social, economic and political issues, in order to discover and suppress the advocacy of force and violence, even if this objective were justifiable.[33] The California Courts in holding the Oath constitutional as a means to this end wholly ignored its excessive breadth.

5. Invalidity of Oath Because It Imposes Restraint Directly Upon First Amendment Rights.

The County's constitutional obligation to utilize a method other than the Oath for achieving its alleged objective also stems from the circumstance that the restraint the Oath effects lies directly on First Amendment rights. For the County has not argued that association with the listed organizations is wrongful; indeed, it concededly has devised the Oath on the basis that association with at least some of the organizations may be entirely blameless

[32] *Cf. Hirabayashi v. United States*, 320 U. S. 81; compare *Brinegar v. United States*, 338 U. S. 160.

[33] The instant case is clearly distinguishable from *United Public Workers v. Mitchell*, 330 U. S. 75, cited by the California Courts [P. 60, 62-3]. There the measure had no such sweeping effect on First Amendment freedoms as here appears, nor was there a glaring failure, as in the instant case, to deal with the alleged evil on a narrow basis.

[S. 16]. Accordingly, it is clear, even without adverting to the necessity for presuming the lawfulness of association with organizations of worthy public purposes in the absence of a showing to the contrary, that association with at least some of the listed organizations is a right under the First Amendment, and could not conceivably be deemed an abuse of the right. Thus, the restraint effected by the Oath's requirement to account and disclose lies directly upon guaranteed rights under the First Amendment. And considering that the Oath requirement in reality restrains liberty of expression, belief, and association with respect to all political, social and economic views or issues of an unorthodox nature (see *supra*, pp. 26-27, 28-30), the effect of the Oath on the guaranteed rights is greatly magnified.

The fact that the Oath imposes a condition directly upon the exercise of First Amendment rights in itself renders it invalid. For even in times similar to the present in that there were wholesale attempts to get at "subversives," this Court held that governmental "intervention can find constitutional justification only by dealing with the abuse (of First Amendment rights). The rights themselves must not be curtailed . . ." (*DeJonge*, 299 U. S. at 364-5). Accordingly this Court has condemned requirements which conditioned the exercise of First Amendment rights, for this reason alone and without regard to the degree of oppressiveness of the conditions. Thus it disapproved even the formal requirement of registration, without considering whether or not it would in practice restrain speech, when the requirement was imposed as a prerequisite for the expression of speech which could not be prohibited as wrongful.[34] Similarly, a license tax, regardless

[34] *Thomas v. Collins*, 323 U. S. 516.

of whether it was nominal or oppressive in amount, was invalidated because it was imposed as a requirement for the distribution of religious literature; since such distribution is a right under the First Amendment and cannot be prohibited, it cannot be conditioned.[35] And if an "activity bears . . . (a) necessary relation to the freedom to speak, write, print or distribute information or opinion," it may not be curtailed even by a police measure regulating its place of exercise, even "on the plea that it may be exercised in some other place." *Schneider v. State*, 308 U. S. at pp. 161, 163.[36]—It cannot be doubted that the activity restrained by the County's requirement to account bears a "necessary relation" to the First Amendment freedoms. There is no conceivable substitute in the fulfillment of the First Amendment freedoms for the freedom to associate, speak, and believe with respect to minority views which is restrained by the Organizations Oath.

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Thus the Oath must be invalidated as an unconstitutional method of achieving the County's objective, even if the validity of the latter be assumed *arguendo*, because of the unjustifiably broad restraint it imposes on First

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[35] *Murdock v. Pennsylvania*, 319 U. S. 105.

[36] At the most, and where the activity does not bear such a necessary relation to First Amendment freedoms, the exercise of First Amendment rights may be regulated only to the extent of reasonable police or health measures as to time and manner of exercise. Thus in speaking of the freedom to distribute information, this Court declared that such freedom "is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved." *Martin v. Struthers*, 319 U. S. 141, 146-7. See also *Schneider*, 308 U. S. at p. 164; *Cantwell*, 310 U. S. at p. 307; *Saia v. N. Y.*, 334 U. S. 558. The drastic suppression resulting from the County's accounting requirement cannot be deemed to fit the exception of a mere regulation of the time or manner of exercise of the vital freedoms involved.

Amendment rights, by a procedure which itself constitutes an invasion of such rights and of principles of individual security, and because it imposes a condition and restraint directly upon First Amendment rights.

B. The Fact That the Persons Required to Take the Oath Are Employees of the County Does Not Render It Constitutional.

The County's argument, in part adopted by the State courts [P. 51-52, 56], that the Oath requirement cannot be deemed unconstitutional because the County may condition County employment as it sees fit, is wholly untenable under the decisions of this Court. The fact of Government employment may of course be relevant, as a fact, to the constitutionality of the suppression of advocacy of force and violence; that is, for example, there may be a clear and present danger from such advocacy by Government employees when such advocacy by other persons under circumstances otherwise the same might not pose an equal danger. But it is clear under the decisions of this Court that insofar as questions of constitutional law are concerned, there is no special standard for the constitutionality of measures affecting Government employees, and the same standards must be applied in the appraisal of the facts adduced in justification of such measures as of measures affecting other groups.

In the recent decision of *United Public Workers v. Mitchell*, 330 U. S. 75, cited by the State Courts [P. 62], this Court, while upholding the regulation of Government employees there involved, based its decision on the regulation's validity under the usual constitutional limitations and standards, and stated explicitly that it could not be deemed valid on a theory of the Government's unlimited power to condition employment (330 U. S., at p. 100).

The argument that the Government is not limited by the Constitution with respect to regulations of its employees and that its measures are within its arbitrary discretion so long as they are limited to this class, is claimed to have a theoretical basis in the fact that the State is not obliged to afford Government employment. But this Court has now repeatedly held that the State cannot extend its powers past their constitutional limitations by the grant, and then conditioning, of privileges; it cannot condition privileges on the surrender of constitutional rights. (*Wheeling Steel Corp. v. Glander*, 337 U. S. 562, 571; *Hannegan v. Esquire*, 327 U. S. 146, 156; *Marsh v. Alabama*, 326 U. S. 501, 504; *Jamison v. Texas*, 318 U. S. 413, 415; *Hague v. C.I.O.*, 307 U. S. 496, 514-516; *Mo. ex rel. Gaines v. Canada*, 305 U. S. 337, 349; *Frost v. R. R. Comm. of Calif.*, 271 U. S. 583.[37]) With the expansion of governmental functions, the conditioning of governmentally-granted privileges has become an increasingly powerful sanction; if the State could use this sanction outside of the Constitution, it could impose arbitrary restraints on the greater part of the population.[38]

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[37] See also the decision of the California Supreme Court in *Danskin v. San Diego Unified School District*, 28 Cal. 2d 536, 171 P. 2d 885 (1946). And see Justice Brandeis dissenting in *United States ex rel. Miuwaukee Social Democratic Publishing Co. v. Burleson*, 255 U. S. 407, 430-1, and pointing out that the Government's denial of mailing privileges to a paper because of views expressed therein, "would prove an effective censorship and abridge seriously freedom of expression." See also Frankfurter, *Mr. Justice Holmes and the Supreme Court* (1938), p. 57, commenting on Mr. Justice Holmes' view in the *Burleson* case as one which "brushed away this web of unreality" of "treating postal facilities as a privilege."

[38] The power to condition Government employment alone affects approximately 5,900,000 persons, the total employed by either Federal, State or local governments as of July 1948; this number comprised about one-tenth of the total employed population of the country. *Survey of Current Business*, Department of Commerce, Bureau of Census, for July, 1948.

This Court's decisions thus destroy the theoretical basis in terms of "privileges" for the argument that the State may impose whatever conditions it wishes on its employees.[39] Pragmatically, this Court has recognized as far back as the *Cummings* and *Garland* cases (discussed *supra*, pp. 31-32), and as recently as the *Lovett* case,[40] that public employment is of such value that its deprivation constitutes a punishment as, or more, severe than a criminal penalty. Accordingly, for the State to condition employment or beneficial treatment in employment on compliance with certain requirements means that the State is imposing a sanction to coerce compliance with such requirements which is as effective as imposition of a fine or imprisonment.[41] Thus, in the instant case, if a requirement to take the Oath is unconstitutional because, as we contend, it does not meet the test of reasonableness of method (*supra*, Point A) nor the test of justification by a clear and present danger (*supra*, Point B), then the State is exerting compulsion for an unconstitutional purpose when it requires the citizen to take the Oath on pain of sacrificing employment or favorable terms of employment.

In sum, we submit that the decisions of this Court irrefutably dictate the rejection of the argument that the

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[39]See *People v. Crane*, 214 N. Y. 154, 108 N. E. 427, affirmed 239 U. S. 195, where Justice Cardozo emphatically rejected this argument for the New York Court of Appeals. Compare *Truax v. Raich*, 239 U. S. 33, where a State law requiring a denial of private employment was held unconstitutional. Though there was no right to such employment, State action causing its denial was subject to the same constitutional safeguards as other State action.

[40]*United States v. Lovett*, 328 U. S. 303. Compare *Fong Haw Tan v. Phelan*, 333 U. S. 6, 10, discussing the equivalent gravity of deportation with a criminal penalty.

[41]There is no more analogy between the power of a private employer or association [P. 52, 56-7] to impose conditions on its employees and that of the State, than there is between the State's and a private individual's power to impede interstate commerce, impose racial discrimination, or act in disregard of any of the other constitutional limitations which apply to State and not to private action.

Organizations Oath can be held valid on the basis that the State can disregard constitutional limitations in the regulations it imposes on its employees.

Lack of Justification for Oath as an Exercise of the Power to Determine Fitness for Employment.

Another view, in addition to that respecting the State's unlimited power to condition employment, which seemed to influence the California Courts to ignore the usual constitutional standards for restraints on free expression, was the view that the Oath was justifiable as a means of determining a person's fitness for County employment [P. 56]. We do not of course quarrel with the power and duty of the County to determine the fitness of its employees.[42] But the Organizations Oath can not be justified as an exercise of this power.

To first consider the question of fitness if the disclosures required by the Oath are taken on their face: unorthodoxy in associations and opinions and the espousal of minority views, which the Oath uncovers, cannot reasonably be deemed to render one unfit for County employment nor can the State enforce political orthodoxy on any group of its citizenry. And considering the Oath as a measure for discovering advocates of force and violence, it is clear that even if such measures could be deemed reasonable exercises of the power to determine the fitness of employees, the Oath would, nevertheless be un-

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[42]Holmes' famous dictum in the *McAuliffe* case (quoted by the State court [P. 52]), may only have meant, and can be reconciled with the doctrines of this Court on the basis, that the conditions he was discussing in fact bore a reasonable relation to fitness and efficiency. Compare with the *McAuliffe* opinion, Mr. Justice Holmes' disapproval in *Milwaukee Publishing Co. v. Burleson*, 255 U. S. 407, 437, of the majority's reasoning with respect to the withdrawal of postal facilities.

constitutional on the ground that it effects a restraint of free expression which is unjustifiably broad for the purpose of determining advocacy of force and violence (*supra*, pp. 35-37). Indeed, however, the Oath considered as a means of determining advocacy of force and violence bears no greater relation to the fitness of employees than if it is considered as a means of determining orthodoxy of opinion. To say that the employee impliedly covenants not to so advocate [P. 55] is merely to beg the question; if the condition of non-advocacy cannot constitutionally be imposed it cannot be either an express or implied covenant.

Belief and speech which is not an evil does not become an evil merely because it is held and expressed by a group of citizens whose employment is in the government. Obviously the liberty of expression of government employees can be suppressed by a regulation such as one prohibiting disruption of work by speech-making, for the prohibition on such conduct is reasonably related to the objective of efficiency. But mere advocacy of forceful overthrow of the government—mere belief and speech in favor of such overthrow,—without any expression in conduct, cannot render an employee unfit; in the absence of the manifestation of such advocacy in conduct, a barrier against employees who so advocate is in reality only a suppression of speech imposed on a part of the citizenry under the guise of a requirement of fitness. By virtue of government employment the citizen does not deliver his constitutional rights into the hands of the Government; and when a requirement is imposed on government

employees because of its alleged relation to their fitness, the courts cannot fail, any more than if a regulation were imposed on any other occupational group in the name of its special relation to the public welfare, to inquire whether it in fact bears a reasonable relation to the alleged objective.

As to the possibility of conduct resulting from advocacy of overthrow of the government, the respondents suggested that County employees impliedly covenant not to destroy their employer (Brief in Opposition to Petition for Certiorari, p. 33); it could equally well be said that every citizen impliedly covenants not to destroy the government. The government's need to protect itself against its overthrow is universal, against all who make such an attempt; it can no more permit itself to be overthrown by non-employees than by employees. Similarly, the need to protect liberty of expression exists with respect to the entire citizenry. Thus employees cannot be distinguished from non-employees with respect to the question of when suppression of expression becomes constitutionally permissible as a means of preventing overthrow of the government.[43] The fact of whether those advocating overthrow of the government are employees is relevant to whether the advocacy creates a clear and present danger of overthrow; but there is no logical basis for abandoning the clear and present danger test when government employees are involved.

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[43]As to the possibility of evils other than overthrow of the government resulting from advocacy of force and violence, see *infra*, note 48. While we urge that a person's belief cannot be deemed the ultimate fact showing his fitness or unfitness for government employment, it would seem that his beliefs could be used as an indication, absent more direct evidence, of whether he was likely to engage in inappropriate *conduct*.

The position that government employees have a special duty not to believe in force and violence would seem to stem in part from the view that gratitude for their livelihood should make them eschew such a belief [see P. 57]; but, stripped of its emotional overtones, this view is merely an embodiment of the discredited theory (pp. 46-49, *supra*), that one who receives privileges from the government may therefore be deprived of constitutional rights—here the right to freedom of belief and expression.

The decision of this Court in *United Public Workers of America v. Mitchell*, cited by the California Court [P. 62] seems of little pertinence. The measure there upheld, —a prohibition of "partisan" political activity,—was upheld on the basis that such conduct had long been considered, and might reasonably be deemed, to interfere with governmental efficiency. No such question is presented here. Furthermore, the Court emphasized that only a narrow restraint on speech was there involved (330 U. S. at p. 100); the measure was drawn to meet a specific evil relating to efficiency and was not subject to attack as is the instant case, as an all-pervasive invasion of free expression.

Finally, it is to be noted that the alleged justification of the Oath in terms of a means for determining "fitness," would apply to numerous other occupations and professions as well as to County employees. Thus, in enacting the measures in issue in the post-Civil War *Cummings* case (*supra*, pp. 31-2), it was thought that "loyalty" was especially required for members of the Bar. And at present Loyalty Oaths, inquisitions, and investigations are in progress to determine "fitness" of

numerous groups and professions."[44] Thus, indeed it is hard to see any limit to the use of the inquisition if the instant Oath is validated, for equal justification exists for its widespread imposition, and there is no barrier in terms of administrative facilities, as in the case of other methods of investigation, to its blanket use.

II.

The Issue of the Constitutionality of the County's Requiring Its Employees to Execute the Oath Was Properly Accepted by This Court for Adjudication.

A. The State Court's Judgment Is Based Upon Its Determination of This Issue.

While petitioner argued below that the County's imposition of the requirement of executing the Oath, and its dismissal of employees on the basis of disclosures in their oaths were both invalid, we here assume, *arguendo*, that the California Court correctly disposed of the latter issue as premature, and base our argument for reversal solely on the grounds of its error in holding that the requirement of execution of the Oath is constitutional. (See Point I.) The respondents, however, have contended that the constitutionality of that requirement should not be reviewed by this Court, on the basis that the State Court's decision rests on the non-Federal ground that no question as to the validity of the County's discharge of employees was ripe for adjudication (Brief

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[44]See statement of Educational Policies Commission, composed of prominent educators including Presidents Conant of Harvard University and Eisenhower of Columbia University, that the increasing passage of special State laws for teachers' loyalty oaths is a "menace to educational freedom." New York Times, Oct. 9, 1949, p. 1.

in Opposition to Petition for Certiorari, pp. 16-17). Even if there had been such a determination as to the issues of discharge, it would not serve as a sufficient basis for the decision; in any event, we believe it is clear that in the passages quoted by respondents, wherein the Court discusses the power of the Civil Service Commission to review discharges of employees by County officials [P. 58-59] and states that discharge for "causes of the character enumerated" is speculative [P. 63], the Court is adverting to discharges on the basis of disclosures in the Oath, an issue with which we are not here concerned, rather than discharge on the basis of a refusal to subscribe to it.[45]

We submit that the State Court intended to adjudicate, and did adjudicate the issue of whether or not State compulsion to require execution of the Oath was valid under the Federal constitution, and that its decision as to the requirement rests on this ground. Thus, after setting forth the "Oath and Affidavit" to which the County employees were to subscribe [P. 48-49], the Court devoted almost the entire remainder of its opinion to consideration of the bases for its constitutionality, adverting explicitly to the Federal constitutional provisions which the petitioner claimed were violated [P. 60-61, see also P. 56]. It discussed at length the Government's right of self-preservation [P. 49-50] and its power to condition the tenure of its employees on their surrender of the right to advocate overthrow of the government [P. 51-56]; it concluded that the requirement of execution of

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[45]The context of the Court's statements so indicates, since the first relates to a discharge "on the sole ground that the employee is 'subversive'" [P. 59] and the second appears to relate to discharge on the ground of advocacy of overthrow of the Government or membership in an organization with that objective [P. 62].

the Oath and affidavit was therefore a proper means of determining fitness for County employment [P. 56] and that such execution could be imposed as a condition of continued employment [P. 56, 57].

The Court's extended discussion of the validity of the requirement that the employees execute the Oath is clearly premised on the assumption that subscription to the Oath would be enforced by and on threat of the penalty of discharge for non-subscription. The State Court devotes the major portion of its opinion to consideration of the extent to which the State can condition employment and discharge employees for failure to observe its conditions [P. 52-56], and in particular the condition not to advocate force and violence [P. 55-56]; it seems clear that the Court was addressing itself to the State's right to discharge for refusal to execute the Oath when it so emphasized in justification for the Oath the State's right to discharge employees for advocacy of force and violence. Furthermore, the Court states explicitly that execution of the Oath can be imposed as a condition of employment, declaring that "employees who cannot subscribe to the prescribed affidavit . . . may join . . . the ranks of private employment" [P. 56] and that "the People may require such an obligation (a "loyalty obligation") from a person seeking to remain in a public position" [P. 57]. Furthermore, in the Court's repeated consideration and approval of the execution of the Oath as a "requirement" imposed by the County [P. 48, 49, 56, 57, 60], the Court clearly expresses its understanding and approval of the fact that the County would exercise its full power over the employees,—which is the power to discharge,—to force execution. And the conclusion that the State Court had no intention in the passages cited by

respondents of foreclosing itself from considering the issue of discharge for a refusal to execute the Oath, is fortified by the fact that there is no doctrinal basis for a failure to adjudicate this issue; while we concede that the doctrine of exhaustion of administrative remedies may be applicable to foreclose judicial consideration at this time of the issue of a discharge following disclosures in the Oaths, this doctrine could not correctly have been treated as a barrier to consideration of the validity of a discharge for refusal to take the Oath.[46]

In any event, if it be assumed from the passages of the opinion quoted by respondents that the State Court did not deem any question of discharge to be presented for adjudication, then the only possible interpretation of the opinion is that the State Court considered petitioner sufficiently threatened with other adverse action by the County for refusal to execute the Oath, so that the issue of

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[46]The doctrine of the necessity for the exhaustion of administrative remedies prior to judicial review could and should have been deemed inapplicable to the issue of discharge for refusal to execute the Oath on any or all of the following grounds: The improbability of administrative relief from discharge for such refusal; the possible detriments to the employee from exhaustion of administrative remedies even if he ultimately was successful in combatting his discharge, such as stigmatization because of his threatened discharge or inability to secure full financial redress for time lost; and, most important, the fact that petitioner could not secure administrative review of the validity of a discharge for a refusal to execute without taking the inordinate risk of the loss of her livelihood. As to these various grounds for considering the doctrine of exhaustion inapplicable, see *Utah Fuel Co. v. National Bituminous Coal Commission*, 306 U. S. 561; *Smith v. Illinois Bell Telephone Co.*, 270 U. S. 587; see *Euclid v. Ambler Realty Co.*, 272 U. S. 365, 386; *Pennsylvania v. West Virginia*, 262 U. S. 553, 592; *Oklahoma National Gas Co. v. Russell*, 261 U. S. 290, 293; compare *Myers v. Bethlehem Corp.*, 303 U. S. 41.

whether or not her refusal could be penalized was nevertheless presented for adjudication. For, the opinion considered either sentence by sentence or as a whole is explicable only on the basis of the Court's realization that it was immediately confronted for adjudication with the issue of State compulsion, whether by a threat of discharge or of other disciplinary action, to force execution of the Oath. In fact, the question of adjudication of the validity of State compulsion to require execution of the Oath through penalization in employment was clearly necessary to the disposition of the cause whether or not discharge was in issue; for the threat of enforcement alleged in the complaint was that employees refusing to subscribe were "to be discharged or otherwise penalized in their employment" [Complaint, par. VII, S. 4].

There can be no doubt that a determination of the validity of the requirement of execution of the Oath was necessary to the disposition of the case, and that the State court's judgment rested on its determination that the requirement was constitutional.

B. The Issue of the Constitutionality of the County's Requiring Subscription to the Oaths Presents a Justiciable Controversy.

The respondents' position in opposing our petition for certiorari (Respondents' Brief in Opposition, p. 22 *et seq.*) that the case presents no justiciable controversy appears to be based on the argument that the threat to petitioner of a penalty for her refusal to subscribe to the Oath is not of sufficient imminence. This argument is without

merit. At the outset, we submit that the major criterion of whether a threat is sufficient to establish the existence of a controversy is here fully satisfied. For the issue at bar is specific, narrow, and clear; there is no problem of the issue's being ill-defined—the problem which has weighed heavily in impelling this Court to decline to adjudicate cases on the ground of insufficiency of the threat.[47] Here the petitioner asserts that she has the right, with impunity and free of penalty, to refuse to subscribe to the Oath promulgated by the County and to refuse to thus disclose whether or not she had any association with the listed organizations. The respondents deny she has this right and on the contrary assert the right to penalize her for such refusal. Thus, there is no question of the Court's speculating as to the scope and precise nature of the right asserted and denied. And the relief petitioner requires: a judgment that the requirement is invalid and an injunction of the County's enforcement of it by penalizing her in her employment status, is equally clear and limited. Thus, the case "admits of specific relief through a decree of a conclusive character as distinguished from an opinion advising what the law would be upon a hypothetical state of facts" (*Aetna Life Insurance Co. v. Haworth*, 300 U. S. 227, 240-241).

The only possible significance, therefore, in the context of this case, of an argument as to the insufficiency of the threat might be that the allegations of the complaint do not show that petitioner's asserted rights are in actual

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[47]See, *e. g., Electric Bond and Share Co. v. S. E. C.*, 303 U. S. 419, 443; *United Public Workers v. Mitchell*, 330 U. S. 75, 89, see Justices Jackson and Frankfurter's dissenting opinions in *Connecticut Mutual Ins. Co. v. Moore*, 333 U. S. 541.

danger of impairment. But it is not for this Court to weigh the imminence of such danger in the same manner as it would, if exercising an equitable function, make a discretionary determination as to the need for injunctive relief. The purpose here is to determine whether petitioner is so little in danger that she cannot even present her claim of right and secure review of the State Court's determination of Federal constitutional questions. Accordingly, all that is necessary is that there be an actual conflict of interests in that the parties have "taken adverse positions with respect to their . . . obligations" (*Aetna Life Insurance Co. v. Haworth*, 300 U. S. at 242).[48]

The undenied allegations of the complaint herein are that the County's governing Board has adopted a recommendation to require County employees to execute the Oath [Complaint, Par. V, S. 3; Ex. A, Par. 5, S. 15]; that appointees of such Board are engaged in executing this requirement and have threatened and do now threaten, and will, unless judicially restrained, cause employees to be discharged or otherwise penalized in their employment unless they execute the Oath [Complaint, Par. VII, S. 4]; that one Board member, speaking for the remainder, stated that anyone refusing to subscribe to the Oath would be discharged [Complaint, Par. VI, S. 4]; and that petitioner refused to subscribe to the Oath [S. 32].

These allegations show the commission of acts creating a danger to petitioner of the application of sanctions for her refusal to execute the Oath and are thus sufficient to

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[48]See Davis, *Standing to Challenge and to Enforce Administrative Action*, 49 Columb. Law Rev. (1949) 759, 760, 792.

show the existence of a controversy.[49] Unless this Court indulges in the supposition that a penalty for petitioner's refusal to take the Oath will not immediately follow the steps alleged in the complaint, it cannot hold the danger petitioner apprehends to be unreal and the conflict of interests between petitioner and respondents to be hypothetical. But such a supposition is completely unwarranted and contrary to the State Court's implicit assumption. Furthermore, such a supposition would be particularly hazardous and inappropriate in the instant case because of the drastic nature of the risk petitioner would then be forced to undergo in order to test her rights; for a decision that she could secure an adjudication of her rights only after respondents took additional action in execution of the threat of enforcement would mean that she must risk her livelihood, as well as stigmatization as disloyal, in order to invoke the Court's jurisdiction. Even

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[49]Respondents' demurrer argued that the allegation as to the Board member's statement with respect to discharge did not specify whether or not it was made in his official capacity [S. 23] and that the allegation as to the threatened action by the Board's appointees similarly omitted such a specification and was insufficiently detailed as to the threats [S. 24]. We do not believe these points need to be debated in this Court for it would be clearly inappropriate for this Court to determine the minimum condition of litigation:—the existence of a controversy,—on the basis of a technical construction of pleadings, particularly where no such construction was made by the State courts. However, the implausibility of the argument that these acts and statements were not effected in official capacity may be noted. Furthermore, since there is no allegation of a disclaimer by the Board of these acts, they would in any event show the imminence of official enforcement. The allegations as to the threats by the Board's appointees are sufficient as a pleading of ultimate facts, particularly in view of the simple and uncomplicated nature of the point in issue: the imposition of a penalty on employees for a failure to subscribe to the Oath. Particularly in view of the unquestioned allegation as to the official determination to require execution of the Oath, the allegations as to the subsequent acts and statements of Board members and their appointees are sufficient to show the actuality of the danger of enforcement of the requirement.

under the exacting standard established in regard to the issuance of an injunction to restrain enforcement of a criminal statute, an injunction is held to lie where the alternative is the litigant's assumption of such a grave risk as is here present in order to determine her rights.[50] Moreover, a holding against petitioner's right to litigate would mean that, in the form of deciding the existence of a controversy, there would be a defeat of the purpose of the declaratory judgment procedure which "has been especially useful in avoiding the necessity . . . of having to act at one's peril or to act on one's own interpretation of his rights, or abandon one's rights because of fear of incurring dangers,"[51] and which has had particular usage in the adjudication of status, and the right to hold office.[52] Accordingly, petitioner must be deemed to have been sufficiently threatened with penalization for her refusal to execute the Oath so that a controversy exists with respect to her right to so refuse.

Finally, this case clearly meets the criterion developed in recent decisions of this Court as to the existence of a controversy; the test is whether the litigant is sufficiently threatened with sanctions for non-compliance with a measure so that he has a real and actual need to know whether it is valid and whether to comply with it in order

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[50]See *Toomer v. Witsell*, 334 U. S. 385, where this Court recently held an injunction was appropriate where any other procedure for testing rights would have exposed the petitioner to substantial losses or risks of loss. See also *Ex parte Young*, 209 U. S. 123, 165.

[51]Senate Report No. 1005, 73rd Cong., 2d Sess., pp. 2-3, discussing State declaratory judgment statutes (quoted by Douglas, J., dissenting in *United Public Workers v. Mitchell*, 330 U. S. 75, at p. 117.) See *Columbia Pictures Corp. v. DeToth*, 26 Cal. 2d 753, 760; *Maguire v. Hibernia Savings and Loan Society*, 23 Cal. 2d 719.

[52]*Perkins v. Elg*, 307 U. S. 325, at 349-50; Borchard, *Declaratory Judgment* (2d ed.), 858, *et seq.*

to avoid the risk of sanctions. Thus, in *La Crosse Telephone Corp. v. Wisconsin Employment Relations Board*, 336 U. S. 18, this Court observed that the order of a State administrative agency which was there involved was not expressed as a "command" and could be enforced only through a proceeding which had not yet been commenced. Nevertheless, this Court held that it had jurisdiction to consider the validity of the order because the order "told the employer, subject to judicial review, with whom he could not refuse to negotiate without risk of sanctions" (336 U. S. at p. 24).[53] Certainly here the respondents have made it clear and definite what action petitioner must take to avoid the risk of very serious sanctions and petitioner has a crucial need to know whether or not to maintain her refusal to comply with their order.[54]

Furthermore, in view of the California Court's approval of the Oath requirement, it can no longer be doubted, even if it could have been doubted prior thereto, that there is an immediate danger of its enforcement and that petitioner is immediately confronted with the necessity of foregoing her asserted rights or risking sanctions. As in *Connecticut Mutual Life Ins. Co. v. Moore*, 333 U. S. 541, there has here been a declaration of validity by the

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[53]Similarly, in *Columbia Broadcasting System v. United States*, 316 U. S. 407, it was held that a party who was threatened under the terms of a Commission regulation with a penalty for non-compliance therewith, could litigate its validity, though it was "not certain whether the Commission will institute proceedings to enforce the penalty incurred under its regulations for non-compliance." (316 U. S. at p. 418.)

[54]It should be noted that the State's need to threaten a specific penalty in order to coerce compliance was decreased by the coercive force inhering in its mere issuance of an order to persons whose livelihood it controls. Compare *I. A. M. v. National Labor Relations Board*, 311 U. S. 72, 78; *N. L. R. B. v. Virginia Electric & Power Co.*, 314 U. S. 469, 477.

State Courts which would compel petitioner to comply in order to escape sanctions "unless this Court reviewed the federal constitutional issues and decided them in appellants' favor" (at p. 550); and as in the *Connecticut Mutual* case, a controversy therefore exists.

The effect of a decision by this Court that there is here no justiciable controversy would plainly be that petitioner, though deprived of this Court's review of the Federal constitutionality of the County's requirement, would nevertheless have to comply with it or suffer penalization. For a repeated attempt to secure an adjudication of the validity of the requirement would surely fail in the California Courts on the ground of *res adjudicata*.[55] Thus she as well as all the other employees upon whose behalf the action is brought would be permanently foreclosed from this Court's review of the constitutional questions.

Petitioner's assertion of the right to refuse to take the Oath, if it is in fact unconstitutional, is not only of private but of public concern.[56] Thus, her right to litigate in order to determine whether or not to comply is in special need of protection. Accordingly, on grounds of policy

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[55]Compare *Maryland Casualty Co. v. Pacific Coal and Oil Co.*, 312 U. S. 270, 274, as to the consequent inappropriateness of this Court's holding that no controversy exists.

[56]See *Pennekamp v. Florida*, 328 U. S. 331, 346. And see Justice Jackson dissenting in *Brinegar v. United States*, 338 U. S. 160, and pointing out the advantage with respect to the preservation of First Amendment freedoms obtaining from the fact that interference with them is usually in such form that "the citizen can and often does go to the court and obtain an injunction."

and fairness as well as precedent, petitioner must be deemed to have a justiciable controversy with respondents."[57]

Conclusion.

We respectfully submit that the Los Angeles County Organizations Oath requirement should be invalidated as unconstitutional under the First and Fourteenth Amendments to the Constitution and the decision of the District Court of Appeal of California should be reversed.

We further respectfully submit that invalidation of the Oath is of high importance for the preservation of First Amendment freedoms not only in Los Angeles County but throughout this country. There is a growing movement throughout the nation for the imposition of Loyalty Oaths, the ascertainment of beliefs and associations in attempts to determine "loyalty," and official condemnation as "subversive" of those which are disapproved. The inevitable result of such efforts is, as in the case of the Oath here in issue, suppression of free expression, thought and association, and of the "vigorous enlightenment" which is essential for democratic growth. In no other democratic Nation have measures been undertaken to

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[57]The question of exhaustion of administrative remedies raised by respondents clearly does not affect the question of whether a controversy exists. The fact that there may be administrative relief from the threatened action does not mean that a present threat does not exist; and in determining whether a controversy exists this Court cannot usurp the State court's function of determining the State question of the proper division of functions between the administrative and judicial agencies.

determine "loyalty" of government employees by Oaths and investigations with respect to their beliefs and associations.[88]

Respectfully submitted,

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[88]Emerson and Helfeld, *Loyalty Among Government Employees*, 58 Yale Law Journal (1948) 1, 120-133.

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Supreme Court

OF THE

United States

October Term, ~~1948~~ 1949

No. ~~721~~ 49

HELEN PARKER, et al.,
Petitioners,

vs.

COUNTY OF LOS ANGELES, et al.,
Respondents.

No. ~~722~~ 50

JULIA LEARNED STEINER,
Petitioner,

vs.

COUNTY OF LOS ANGELES, et al.,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court

OF THE

United States

October Term, 1948

No. 711

HELEN PARKER, et al.,
Petitioners,

vs.

COUNTY OF LOS ANGELES, et al.,
Respondents.

No. 712

JULIA LEARNED STEINER,
Petitioner,

vs.

COUNTY OF LOS ANGELES, et al.,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I.

STATEMENT OF FACTS

The joint petitions for certiorari herein seek review of a judgment of the District Court of Appeal of the State of California. The judgment became final

with the denial of hearing by the State Supreme Court on January 10, 1949 (P. 76, S. 49).* The opinion by the District Court of Appeal sets forth with particularity the facts on page 489 of 88 A. C. A. (P. 47-63, S. 47):

"CONCEDED FACTS

"On August 26, 1947, the Board of Supervisors of the County of Los Angeles adopted a resolution requiring each officer and employee under its jurisdiction to execute an oath and affidavit reading as follows:

"'OATH AND AFFIDAVIT

"'DEPARTMENT _____

"'A. OATH OF OFFICE OR EMPLOYMENT

"'I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of California, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office or employment on which I am about to enter or am now engaged. SO HELP ME GOD.

"'B. AFFIDAVIT RE SUBVERSIVE ACTIVITY

*References to the Parker record will be thus: (P. 1) and to the Steiner record thus: (S. 1).

"'I do further swear (or affirm) that I do not advocate, nor am I now a member, nor have I been since December 7, 1941, a member of any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles, by violence, except those specified as follows: _____ and that during such time as I am an officer or employee of the County of Los Angeles, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles, by force or violence.

"'C. AFFIDAVIT RE ALIASES

"'I do further swear (or affirm) that I have never used or been known by any names other than those listed as follows: _____.'

"Also included in the document is paragraph 'D' requiring such officers and employees to indicate whether they have been a member of or supported any of some 142 named organizations.

"September 3, 1947, plaintiffs, who are employees of the county of Los Angeles, filed complaints, seeking an injunction to prevent defendants from requiring them to execute an affidavit as set forth above.

"March 5, 1948, the Honorable Clarence M. Hanson, trial judge, sustained demurrers to plaintiffs' amended complaints without leave to amend, and on March 9, 1948, judgments of dismissal of the actions were entered. From these

judgments plaintiffs appeal. There are also purported appeals from the orders sustaining defendants' demurrers to plaintiffs' complaints as amended."

The opinion of the District Court of Appeal also sets forth the question involved in the litigation before the State court:

"Question

"*May the Board of Supervisors of the County of Los Angeles proceed with a fact-finding program under which the officers and employees within its jurisdiction are asked: (1) to take an oath of allegiance to the federal and state constitutions and the laws of California as against all enemies of the United States of America, the State of California, and the county of Los Angeles; and (2) as such officers and employees to answer upon their oath or affirmation, (a) whether or not they advocate the overthrow of the government by force or violence, and whether or not since December 7, 1941, they have been members of any organizations or political parties that advocate the overthrow of the government by force or violence, as well as to sign an affidavit not to advocate the overthrow of the government by force and violence or to become a member of an organization or political party which so advocates so long as the person is a county officer or employee; (b) to state any aliases they have ever used or been known by; and (c) to indicate whether they have ever been a member of or directly or indirectly supported any of the organizations listed in the affidavit submitted to them?*"

In addition to stating the question with particularity, the highest court of the state passing upon the litigation expressly declared that the question of discharge was not before the court:

> "'. . . Whether the appointing power will or will not discharge employees as claimed by the plaintiffs, for causes of the character enumerated, and whether the Civil Service Commission will uphold such discharges, if any, on such causes, are not matters upon which this Court may speculate or adjudicate at this time. . .'" (P. 63).

II.

PETITION FOR CERTIORARI PREDICATED ON BASIC ERROR

(a) *Petition is predicated on erroneous facts.*

The basic error of the petition for writs of certiorari is the assumption of imaginary facts followed by legal theories attempting to support the petition for hearing based upon the imaginary facts but in no way applicable to the facts at bar. These theories in no way dispose of the real issues which were before the state court.

It seems implausible that petitioners should obtain writs of certiorari by reciting facts which are not at bar, followed by a request that this court pass on legal theories allegedly applicable to such imaginary facts but not applicable to the real issues which were before the state court.

The real facts, of course, are as related in the decision of the District Court of Appeal,* as no petition for rehearing challenging the facts as set forth in the District Court of Appeal opinion was filed in said court.

Imaginary assertions give rise to false questions, and therefore in order to properly determine what constitutional questions are before this court a clear understanding of the actual facts must be envisaged.

An examination of the order of the Board of Supervisors and a reference to the questions alleged by the petitioners to be presented, quickly demonstrates the fallacy of relying on imaginary facts. Petitioners' statement as to what they presume to be the facts discloses:

> (1) "Under Paragraph 'D' of the compulsory Oath and Affidavit county employees are required to disclose . . . The scope of the disclosure thus required is revealed by an examination of the listed organizations and publications which include among others the following . . ." (Petition, pages, 4, 5).

*Rules on Appeal for the Supreme Court and District Courts of Appeal of the State of California, Rule 29b: "*On petition for hearing, the Supreme Court will not examine the record for error, or inquire into the correctness of the facts stated in the opinion unless the petition shows (1) that material facts were omitted from or incorrectly stated in the opinion of the District Court of Appeal and that the alleged omission or other inaccuracy was set forth in a petition for rehearing and was not corrected by the District Court of Appeal;* or (2) that substantial legal issues raised in the brief were not considered in the opinion, and that the failure to consider them was set forth in a petition for rehearing." (Italics ours.)

Then follows a list *which is not* a copy of the organizations embraced within the Board order, or a copy of any allegation in the amended complaint in the state court, but a list interspersed with conclusions relating to the purpose of the organizations. An apparent defect is the listing of "Named Religious Organizations." There is no evidence to support the conclusion that any religious organization is listed in Paragraph "D" of the Oath and Affidavit.

Respondents unhesitatingly deny that any organization listed is a religious organization.

This conclusion unsupported by true facts is demonstrative of other conclusions and assumptions of purported facts by the petitioners which are not supported by the record. As, for example:

> (2) "Any county employee, including petitioners, who fails or refuses to execute the Oath and Affidavit *is to be discharged* from county employ." (Petition, page 6.) (Italics ours).

This conclusion is again the statement of a nonexistent fact. Actually the order of the Board of Supervisors contains no reference whatsoever to discharge or any other penalty. (P. 16, S. 15).

Further the state court determined (P. 63):

> "Whether the appointing power will or will not discharge employees as claimed by the plaintiffs, for causes of the character enumerated, and whether the Civil Service Commission will uphold

such discharges, if any, on such causes, are not matters upon which this Court may speculate or adjudiate at this time. . ."

Another imaginary fact stated in the Petition is:

(3) "Petitioners in their amended complaint sought injunctions prohibiting the respondent County and the several respondent officers thereof from requiring petitioners, *on pain of discharge*, to execute the Oath and Affidavit." (Petition, page 7.) (Italics ours.)

This statement, as a fact, is not within the purview of the order of the Board of Supervisors of the County of Los Angeles which was under attack in the state court. Neither the Board of Supervisors nor the Loyalty Check Committee can discharge petitioners. The state court made this clear in its construction of the order of the Board of Supervisors and the state statutes. In this respect the state court declared (P. 58):

"In case the appointing power wishes to discharge a civil service employee the reasons therefor must be given and, thereupon, if the employee so desires he is entitled to a hearing before the commission. If the commission finds that the reasons are not sufficient, the discharge is void, [fol. 415] despite anything the appointing power can do about it.

"From what has so far been said, it is self-evident that neither the Board nor its agents can

discharge a civil service employee for any cause that the Civil Service Commission finds insufficient. Accordingly, if in the view of the Board of Supervisors, or its agents as the appointing power, a civil service employee should be discharged on the sole ground that the employee is 'subversive,' the discharge or attempt to discharge on that ground is of no effect if, on hearing, the Commission holds otherwise."

Petitioners state further:

(4) "The committee is ordered and directed, if it decides *on the basis of any answer to the Oath and Affidavit* or as a result of any of the other parts of its ordered investigation, that any employee is 'subversively inclined,' *to publicly report* such individual . . ." (Petition page 6-7) (Italics ours)

This alleged statement of a fact is precisely contrary to the actual facts at bar. The order of the Board of Supervisors does not authorize the Loyalty Check Committee to *publicly* report. Futhermore under the order of the Board of Supervisors, the Loyalty Check Committee can only report if the employee is known to be subversive. (P. 18, S. 17) The Board of Supervisors' order specifies that membership in the listed organizations in and of itself is not evidence of subversiveness. (P. 17, S. 16):

". . . (W)e wish to make it clear that the mentioning of the name of an organization in these reports does not necessarily mean and is not

intended to convey the implication that they are subversive or Communistic or have ever been engaged in any subversive or Communistic activities."

There is no allegation in the amended complaint that the petitioners ever answered the Oath and Affidavit. Until such time as petitioners answer the Oath and Affidavit, the allegation of *publicly* reporting is purely a hypothetical assumption of what might happen in the event they did execute the Oath and Affidavit.

(b) *Petition raises false questions.*

That imaginary assertions give rise to false questions is clearly indicated by the statement of petitioners as to their conception of the questions presented. (Petition, page 8).

The first assumption is that of *compulsion* on behalf of the employees to execute the Oath and Affidavit. As it clearly appears that the issue of discharge or other penalty for failure to answer the Oath and Affidavit does not exist under the Board of Supervisors' order of August 26, 1947, there was, therefore, no compulsion to execute the Oath and Affidavit.

It is also assumed that the execution of paragraphs "B" and "D" of the Oath and Affidavit deprives the petitioners of the liberty of religion. It is an undeniable fact that the constitutional question of deprivation of the liberty of religion was not pleaded in the

complaint, was not raised by the petitioners in any of their briefs before the District Court of Appeal, nor was it raised by the petitioners in their petition for hearing before the Supreme Court of the State of California. The state court did not voluntarily pass upon the religious issue. (P. 47, S. 47).

(c) *Petition contains reasons predicated upon statements which are not true and are not the facts as evidenced in the record.*

The injection of imaginary facts into the petition for certiorari not only creates false questions but likewise creates false reasons upon which this court is asked to grant the writs of certiorari.

On page 9 of the Petition under the heading "Reasons for Granting the Writs", petitioners declare:

> " . . . The concept that one, even a public employee, must account to his superior . . . as to the manner in which he may choose to worship his God, is a concept utterly foreign to this country."

This alleged reason for granting a writ may be a perfectly good reason in some other law suit but certainly not this one. No religious organization is mentioned in the Oath and Affidavit and no contention that religious rights were abrogated was in any manner raised by the petitioners in the state court, nor was such an issue passed upon by the highest court of the state.

As a further reason for the granting of petition for certiorari, petitioners argue that the inclusion of Paragraphs "B" and "D" of the Oath and Affidavit "tends to coerce and intimidate petitioners in their free exercise of those liberties." (Petition, page 10). Obviously if the issue of discharge or other penalty does not exist under the terms of the Board order of August 26, 1947, there can be no coercion or intimidation and therefore any assertion of a tendency to coerce and intimidate as a reason for granting the petition for certiorari is an invalid and unwarranted reason.

III.

REASONS WHY CERTIORARI SHOULD NOT BE GRANTED

The petition for certiorari should be denied for the following reasons:

1. The Supreme Court of the United States will not review a constitutional question predicated upon imaginary facts not presented by the record.

2. The decision of the State court is supported by adequate and independant state grounds.

(a) Determination that no issue of discharge by the Board of Supervisors or the Loyalty Check Committee can exist in this litigation under the law in California.

(b) Determination that issue of discharge is premature.

(c) Determination that petitioners must first exhaust their administrative remedy by seeking review of the Civil Service Commission in the event that a discharge does occur.

3. The Supreme Court will avoid the unnecessary decision of constitutional questions.

4. The construction given by the highest state court to a statute of that state is conclusive upon the Supreme Court of the United States where the question involved is whether such statute is repugnant to the Federal Constitution.

5. The petition for certiorari presents no case or controversy cognizable in the Supreme Court of the United States.

(a) As construed by the District Court of Appeal of California, the Board of Supervisors' order of August 26, 1947, presents no case or controversy.

(b) Petitioners' amended complaint does not contain facts essential to state a case or controversy.

6. Particular reference to *Steiner v. County of Los Angeles*, No. 712.

1. The Supreme Court of the United States Will Not Review a Constitutional Question Predicated Upon Imaginary Facts Not Presented in the Controversy.

The petition is based upon an assumption of facts not supported by but contrary to the facts at bar and

also contrary to the recital of facts as found in the decision of the District Court of Appeal of the State of California.

The Supreme Court, on petition for certiorari, will not answer questions based upon a state of facts not presented in the case. *General Talking Pictures Corp. v. Western Electric Co.*, 305 U.S. 124, 83 L. Ed. 81. Rehearing denied in 305 U.S. 675, 83 L. Ed. 437.

The facts in the present case indicate two fundamental observations. First, that the petitioners are alleged to be employees of the County of Los Angeles, and second, that the Board of Supervisors of the County of Los Angeles adopted an order on August 26, 1947, which order is incorporated in the amended complaint.

These facts are set forth in full in the decision of the District Court of Appeal. The petitioners are well aware of the rule under California law that these facts, as stated in the opinion of the District Court of Appeal, are binding upon them because they did not inquire into the correctness of the facts so stated by filing a petition for rehearing before the District Court of Appeal.*

The order of the Board of Supervisors of August 26, 1947, was incorporated by reference in the petitioners' amended complaint in the state court. Allega-

*See footnote, page 6, this brief.

tions contrary to the language of the instrument incorporated by reference are not admitted on general demurrer and are surplusage. *Washer v. Bank of America*, 21 Cal. (2d) 822 at 829; *Pimentel v. The Hall-Baker Co.*, 32 Cal. App. (2d) 697, 701; *Bashford v. A. Levy & J. Zentner Co.*, 123 Cal. App. 204, at 209; *Peak v. Republic Truck Sales Corp.*, 194 Cal. 782 at 790; *Alphonzo E. Bell Corp. v. Bell, etc. Synd.*, 46 Cal. App. (2d) 684.

It is equally well recognized that an allegation of fact contrary to law or impossible in law is not admitted on general demurrer and is surplusage. *Griffin v. County of Colusa*, 44 Cal. App. (2d) 915; *Bookbinders' Trade Ass'n. v. Book Mfrs. Institute*, 7 Fed. Supp. 847, at 848.

It is a fundamental principle that the drastic sanctions of equity may not be invoked without a detailed showing of specific facts justifying such relief. *Davitt v. American Bakers' Union*, 124 Cal. 99; *McKay v. Retail Auto. S. L. Union No. 1067*, 16 Cal. (2d) 311; *City of Alturas v. Gloster*, 16 Cal. (2d) 46.

2. The Decision of the State Court Is Supported by Adequate and Independent State Grounds.

Certiorari should be denied because the decision of the District Court of Appeal of California is supported by adequate and independent grounds based upon California law which involve no issue of Federal constitutional law.

(a) The first independent state ground is the determination that no issue of discharge by the Board of Supervisors or the Loyalty Check Committee can exist in this litigation under the law in California. The District Court of California stated:

> *"From what has so far been said, it is self-evident that neither the Board nor its agents can discharge a civil service employee for any cause that the Civil Service Commission finds insufficient.* Accordingly, if in the view of the Board of Supervisors, or its agents as the appointing power, a civil service employee should be discharged on the sole ground that the employee is 'subversive,' the discharge or attempt to discharge on that ground is of no effect, if, on hearing, the Commission holds otherwise." (Italics ours.) (P. 59)

(b) The second independent state ground is the determination that the issue of discharge is premature.

The California court construing California law determined that the issue of discharge was not before the court in this litigation. In relation to this question, the District Court said:

> "Whether the appointing power will or will not discharge employees as claimed by the plaintiffs for causes of the character enumerated, and whether the Civil Service Commission will uphold

such discharges, if any, on such causes, are not matters upon which this Court may speculate or adjudicate at this time. . . ." (P. 63)

(c) The third independent state ground is the determination that petitioners must first exhaust their administrative remedy by seeking review of the Civil Service Commission in the event that a discharge does occur.

The California Court determined that under California law the conclusive and final right to discharge is vested in the Civil Service Commission of Los Angeles County, and as a corollary, the issue of discharge is not subject to judicial review until petitioners have exhausted their administrative remedy.

The District Court of California stated in its opinion:

> "In case the appointing power wishes to discharge a civil service employee the reasons therefor must be given and, thereupon, if the employee so desires he is entitled to a hearing before the commission. If the commission finds that the reasons are not sufficient, the discharge is void, (fol. 415), despite anything the appointing power can do about it." (P. 58-59)

The rule of exhaustion of administrative remedies is settled in California beyond all question. In the case of *Abelleria v. District Court of Appeal*, 17 Cal. (2d) 280, at page 292 thereof, the Supreme Court of California stated:

"The rule is that where an administrative remedy is provided by statute, relief must be sought from the administrative body, and this remedy exhausted before the Courts will act. The authorities to this effect are so numerous that only the important ones need be cited here as illustration. (Authorities) The California cases have consistently applied this settled rule. (Authorities)

"The rule itself is settled with scarcely any conflict. It is not a matter of judicial discretion, but is a fundamental rule of procedure laid down by Courts of last resort followed under the doctrine of *stare decisis* and binding upon all Courts. . . We are necessarily led to the conclusion that exhaustion of the administrative remedy is a judicial prerequisite to resort to the Courts."

In California the rule of exhaustion of administrative remedies applies to the review of a discharge of an employee of the County of Los Angeles by the County Civil Service Commission. In the Case of *Jackson v. Howser,* 66 Cal. App. (2d) 870, the District Court of Appeal said:

"It is a jurisdictional prerequisite to an action for judicial relief that the applicant must first invoke and exhaust administrative remedies provided by the provisions of a statute or charter."

The court quoted sec. 34, subdiv. 13 of the Los Angeles County Charter and said:

"There is not any allegation in the petition as amended showing that petitioners complied with the provisions in . . . the Los Angeles County

Charter. Petitioners thereby failed to show a compliance on their part with the provisions of the Los Angeles County Charter and are therefore, under the doctrine of 'exhaustion of administrative remedies,' precluded from having a writ of mandate issue in the present action."

The United States Supreme Court recognizes the rule that one must exhaust his administrative remedies prior to resorting to the courts for judicial determination of his rights. *Myers v. Bethlehem Shipbldg. Corp.*, 303 U.S. 41, 82 L. Ed. 638.

3. The Supreme Court Will Avoid the Unnecessary Decision of Constitutional Questions.

(a) It is well established that until such time as petitioners exhaust the administrative remedies available to them under California law a determination by this court on constitutional questions is unnecessary and premature.*

(b) The petition for certiorari should be denied because the complaint for declaratory relief is an improper remedy to test the validity of a state statute for vagueness and uncertainty in the absence of prior construction by a state court. Until such meaning is determined by the state court, a determination by this court unnecessarily determines a constitutional question.

*This brief, pages 17-19.

Petitioners urge that the program of respondents is void because of alleged wholly arbitrary and ill-confined standards. (Petition, page 16.)

In the case of *Alabama State Federation of Labor v. McAdory*, 325 U.S. 450, 89 L. Ed. 1725, at page 1739, this Court said:

> "(T)he objection that sections 7 and 16 of the state statute are too vague and uncertain to meet constitutional requirements is one which cannot appropriately be considered in a declaratory judgment proceeding in the federal courts in advance of their authoritative construction by a state court. As we have said, it is the duty of the federal courts to avoid the unnecessary decision of constitutional questions. (citing cases). But the use of the declaratory judgment procedure to test the validity of a state statute for vagueness and uncertainty invites rather than avoids the unnecessary decision of the constitutional question."

The reasoning of the court is predicated upon the fact that the state court when given an opportunity may so construe the state statue as to avoid any claim of unconstitutionality.

4. The Construction Given by the Highest State Court to a Statute of That State Is Conclusive Upon the Supreme Court of the United States Where the Question Involved Is Whether Such Statute Is Repugnant to the Federal Constitution.

If the construction by the District Court of Appeal of the State of California renders the order of the Board of Supervisors of August 26, 1947, constitutional and valid legislation, the Supreme Court of the United States will not disregard this construction and arrive at a different construction which will make the Board order repugnant to the Federal Constitution. *Tullis v. Lake Erie & W. R. Co.*, 175 U. S. 348, 44 L. Ed. 192.

The rule is established that in passing on the constitutionality of a state statute, the Supreme Court of the United States will follow the decisions of the state court of last resort as to the purpose and scope of a statute and will only determine whether such statute as so construed is in conflict with the Federal Constitution. *Fallbrook Irrig. Dist. v. Bradley*, 164 U.S. 112, 41 L. Ed. 369; 11 Am. Jur. 745.

The statute is to be read with the construction placed upon it by the state court. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 73, 55, L. Ed. 369, 375; *Bandini Petroleum Co. v. Superior Court*, 284 U.S. 8, 18, 76 L. Ed. 126, 143; *Huddleston v. Dwyer*, 322 U.S. 232, 236, 88 L. Ed. 1246, 1249; *West v. American Telephone and Telegraph Co.*, 311 U.S. 223, 236, 85 L. Ed. 139, 143.

5. The Petition for Certiorari Presents No Case or Controversy Cognizable in the Supreme Court of the United States.

(a) As construed by the District Court of Appeal of California, the Board of Supervisors' order of August 26, 1947, presents no case or controversy.

Under the decision of the District Court of Appeal, interpreting the state law, there is eliminated from consideration the alleged issue of discharge. The state law is also interpreted to indicate that the members of the Loyalty Check Committee have no legal power to discharge petitioners. Therefore, the sole controversy before this court is predicated upon the allegations of

1. The status of petitioners as employees, and

2. The bare existence of the Board order of August 26, 1947.

It is established by numerous decisions of this Court that the bare existence of a statute which might affect an individual in the absence of any actual, as distinguished from potential, act to apply or enforce the statute, presents no justiciable case or controversy. This principle is clearly defined and supported by the decision in the case of *United Public Workers v. Mitchell*, 330 U.S. 75, 91 L. Ed. 754. Therein this court stated at page 767:

> "The power of courts, and ultimately of this Court, to pass upon the constitutionality of acts of

Congress arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough. . . . It would not accord with judicial responsibility to adjudge, in a matter involving constitutionality, between the freedom of the individual and the requirements of public order except when definite rights appear upon the one side and definite prejudicial interferences upon the other. . . .

"Should the courts seek to expand their power so as to bring under their jurisdiction ill-defined controversies over constitutional issues, they would become the organ of political theories. Such abuse of judicial power would properly meet rebuke and restriction from other branches. By these mutual checks and balances by and between the branches of government, democracy undertakes to preserve the liberties of the people from excessive concentrations of authority. No threat of interference by the Commission with rights of these appellants appears beyond that implied by the existence of the law and the regulations."

The actual facts in the instant case and the case of *United Public Workers v. Mitchell, supra,* are substantially identical.

Both cases involve actions for injunction and declaratory relief.

Both cases involve the existence of regulations limiting the conduct and prescribing duties of public employees.

Both cases concern petitioners belonging to a class embraced within the rule of conduct.

The statute in the *United Public Workers v. Mitchell* case, *supra,* and the Board of Supervisors' order in the case at bar involve no threats to petitioners other than those implied by the petitioners from the existence of the regulations.

The case at bar contains two factual differences which render the instant controversy more nebulous and ill-defined than *United Public Workers v. Mitchell, supra.*

First, in the *United Public Workers* case, *supra,* the petitioners were advised by the terms of the Hatch Act that violation would result in dismissal from the service; whereas, in the instant case as construed by the State Court of California, the issue of discharge is not presented, and even assuming that it is presented, the respondent members of the Loyalty Check Committee do not have power to discharge.

Second, in the *United Public Workers* case, *supra,* this court was advised of the proposed action of the petitioners and the manner in which the Hatch Act purportedly would concretely and adversely affect them. In the instant case the proposed action of petitioners in relation to the Board order of August 26, 1947, is unknown to this court. They do not state that they will refuse to execute the oath and affidavit; or assuming that they will, in what manner their answers will be antagonistic to the program of respondents. As

a result, this Court is unable, upon the record presented, to even advise petitioners unless it assumes a series of hypothetical situations which might apply to all of the individual petitioners.

The declarations of this Court embraced in the *United Public Workers* case, *supra*, constitute no new position of the Court but are a reaffirmation of principles long established. These principles apply with equal force to actions for injunction and those for declaratory relief.

In the case of *Massachusetts v. Mellon*, 262 U. S. 447, 67 L. Ed. 1078, at page 1084, the Court adopted a quotation from *Cherokee Nation v. Georgia*, 5 Pet. 1, 8 L. Ed. 25, to the following effect:

> "This court can have no right to pronounce an abstract opinion upon the constitutionality of a state law. Such law must be brought into actual or threatened operation, upon rights properly falling under judicial cognizance, or a remedy is not to be had here."

In *New Jersey v. Sargent*, 269 U. S. 328, 70 L. Ed. 289, at page 294, the Court states:

> "While the state is thus apparently put in the position of objecting to the licensing of projects sanctioned by its own laws, the bill explains that the objection is chiefly to the restrictions and conditions to which, according to the terms of the act, an applicant is deemed to assent by seeking and accepting a license. These restrictions and conditions are assailed in the bill as passing beyond the

field of congressional power and invading that reserved to the state. But whether they are thus invalid cannot be made the subject of judicial inquiry *until they are given or are about to be given some practical application and effect.*" (Italics ours.)

In the case of *United States v. West Virginia*, 295 U. S. 463, 79 L. Ed. 1546, at 1552, the Supreme Court stated:

" . . . Until the right asserted is threatened with invasion by acts of the State, which serve both to define the controversy and to establish its existence in the judicial sense, there is no question presented which is justiciable by a federal court."

The Court further stated in the case of *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 80 L. Ed. 688, at 698:

" . . . The pronouncements, policies and program of the Tennessee Valley Authority and its directors, their motives and desires, did not give rise to a justiciable controversy save as they had fruition in action of a definite and concrete character constituting an actual or threatened interference with the rights of the persons complaining. The judicial power does not extend to the determination of abstract questions.

" . . . *Claims based merely upon 'assumed potential invasions' of rights are not enough to warrant judicial intervention.*" (Italics ours.)

In the case of *Watson v. Buck*, 313 U. S. 387, 85 L. Ed. 1416, at page 1423:

"A general statement that an officer stands ready to perform his duty falls far short of such a threat as would warrant the intervention of equity."

The principle is very graphically illustrated in the case of *Helco Products Co. v. McNutt,* U. S. Court of Appeals for the District of Columbia, 137 Fed. (2d) 681, wherein the Court of Appeals declared:

" . . . Appellant concedes that the Agnew case, and others, speak in terms of an official threat of enforcement, as a requisite of justiciability in declaratory judgment actions. But appellant would distinguish the present case on the theory that: 'In the case at bar the Administrator has the authority and as a matter of law has officially threatened to prosecute the appellant or to seize and libel its merchandise.'

" . . . It does not appear just how far appellant would carry its argument concerning the threat of prosecution which, it says, is implicit in the statute by reason of its civil and criminal sanctions. Here again the argument reduces itself very quickly, to an absurdity. Certainly such sanctions are convincingly present in laws prescribing homicide and robbery. But, presumably, it would not be seriously contended that one who contemplated killing another, or taking his property, could establish his right to a declaratory judgment, upon a hypothetical case of murder or robbery, *by requesting in advance the advice of a grand jury or the attorney general. The fact that one wants or needs legal advice is not sufficient.*

" . . . Here, no order was issued, no steps were

taken to put any administrative program into action; appellant was far removed from penalties of any kind. This was not enough.

"No doubt, a persuasive argument can be made for extending the use of advisory opinions to all situations in which conflicts may impend, between private business and government agencies, in the working out of policies and programs. Much of the uncertainty of business management could, perhaps, thus be eliminated. *What a comfort it would be, if a declaratory judgment could be made as available as an interoffice memorandum, whenever a board of directors meets to consider a proposed new venture. But that millenium has not yet arrived.*" (Italics ours.)

(b) Petitioners' amended complaints do not contain facts essential to state a case or controversy.

Twenty-five petitioners are now petitioning this court to declare their rights as said rights existed upon the date petitioners' complaints were filed, which was seven days after the Board of Supervisors' order of August 26, 1947. (P. 25, S. 23.) The complaint proceeds upon a series of imaginary situations which must be assumed by the court. After so assuming the existence of such situations, then none of the situations may be applicable to any of the petitioners.

Petitioners or any of them do not state that they have or even will refuse to execute the Oath and Affidavit.

Petitioners or any of them do not state whether or not they have or intend to sign the Oath and Affidavit and whether in this connection they have or intend to execute only part of the Oath and Affidavit.

Petitioners or any of them do not disclose if they have ever been or now are members of any organization which advocates the overthrow of the government by force and violence.

Petitioners or any of them do not disclose if they advocate the overthrow of government by force and violence.

Petitioners or any of them do not disclose if they have ever been or now are members of any or all of the organizations listed in Paragraph "D" of the Oath and Affidavit.

Petitioners or any of them do not disclose for what reason, if any, they will be discharged, if it be presumed that a discharge will occur.

Petitioners or any of them do not disclose for what reason, if any they will be reported to the Board of Supervisors as subversive and disloyal.

Petitioners or any of them do not disclose for what reason if any they will suffer irreparable injury because of the alleged acts of the respondents.

In addition to these material omissions this Court is further asked to assume that the respondents have taken certain action equally essential to the establishment of a judicial case or controversy.

This Court must assume that pursuant to the Board order of August 26, 1947, and before September 3, 1947, the respondents printed and circulated 22,000 oaths and affidavits and did present them for signature to the same 22,000 employees.

This Court is further asked to assume that within the same seven days, but without any facts in support thereof, that the respondents, and particularly the Loyalty Check Committee had a meeting, were advised that some of the petitioners had not signed, and then as a matter of fact did threaten each or some of the petitioners with dismissal.

This Court is asked to assume that within the same seven days, but without any facts in support thereof, that the respondents, and particularly the Loyalty Check Committee, had a meeting, were advised that some or all of the petitioners had indicated membership in organizations which advocated the overthrow of constitutional government by force and violence in Paragraph "B" and marked organizations listed in Paragraph "D", and as a matter of fact, did threaten each or all of petitioners with dismissal.

This Court is asked to assume that within the same seven days, but without any facts in support thereof, that the Auditor prepared in triplicate, an alphabetical list of 22,000 employees, transmitted these lists to the Registrar of Voters and to the Federal Bureau of Investigation, and that still within the same seven

days, the Registrar of Voters and the Federal Bureau of Investigation returned the same to the Loyalty Check Committee, who thereafter held a meeting, digested all of the reports and then decided, in conjunction with the answers disclosed in the oath and affidavit, that some of the petitioners should be reported to the Board of Supervisors, and further and independently of the report to the Board of Supervisors, did threaten each and all of the petitioners with discharge.

This Court is entitled to objective proof in the form of specific and concrete allegations of fact that an actual case or controversy exists. This Court should not be compelled to determine a constitutional issue upon the purely subjective claim of petitioners that they have been "threatened." To contend otherwise is to deprive this court of its power to determine its jurisdiction and grant to petitioners and all other claimants the prerogative to create controversies where in fact none exist.

6. Particular Reference to Steiner v. County of Los Angeles No. 712.

The amended complaint alleges that Steiner is a County employee. (S. 1.)

The amended complaint alleges that the order of the Board of Supervisors specifically relates to County employees. (S. 4.)

Steiner is not a County employee. Steiner resigned November 3, 1948. (Please see Exhibit "A" attached hereto.)

One of the elementary doctrines of constitutional law, firmly established by the authorities, is that the constitutionality of a legislative act is open to attack only by a person whose rights are affected thereby. Before a law can be assailed by any person on the ground that it is unconstitutional, he must show that he has an interest in the question in that the enforcement of the law would be an infringement on his rights. Assailants must therefore show the applicability of the statute and that they are thereby injuriously affected.

The rule that interested parties alone can question the constitutionality of statutes applies likewise to ordinances. *Buchanan v. Warley,* 245 U. S. 60, 62 L. Ed. 149; *11 Am. Jur.* 748-749.

The corollary to the general rule is that one who is not prejudiced by an enforcement of the act of the legislature cannot question its constitutionality. As Steiner is not a member of the class affected, she may not now seek certiorari. Furthermore, she must, in order to maintain certiorari, show that she is a member of the class and will be prejudiced by the statute in question. *First National Bank v. Louisiana Tax Comm.,* 289 U. S. 60, 77 L. Ed. 1030; *Interstate Busses Corp. v. Holyoke Street R. Co.,* 273 U. S. 45, 71 L. Ed. 530; *Middleton v. Texas Power & L. Co.,* 249 U. S. 152, 63 L. Ed. 527; *11 Am. Jur.* 759.

IV.

THE ISSUES ACTUALLY BEFORE THIS COURT UNDER THE PETITION FOR CERTIORARI PRESENT NO DEBATABLE CONSTITUTIONAL QUESTION.

a. Petitioners come before this court not as private citizens but as employees of the people of the County of Los Angeles and the State of California. Therefore petitioners seek redress against their government not under constitutional guarantees extended to them as private citizens; petitioners are in reality before this court asking for an interpretation of their *rights as framed by a contract* between the petitioners and the citizens of the County of Los Angeles and the State of California. (P. 2; S. 2.)

b. The petitioners have accepted the conditions of their contract. Petitioners impliedly covenant that they will not destroy their employer; that they will be loyal to the form of government lawfully chosen by the people; that they will faithfully perform their duties and that they will work no injury to the government that they are employed to represent. *Brown et al. v. Dupuy,* 4 Fed. (2d) 367; *Miller v. Jones,* 159 N. W. 671; *Osburn v. DeForce,* 257 Pac. 685; *Puritas Laundry Co. v. Green,* 15 Cal. App. 654; *Pawell v. Unemployment Compensation Board of Review,* 22 Atl. (2d) 43; *Hornung v. State,* 19 N. E. 151; *Friedman v. Schwellenbach et al.,* 159 Fed. (2d) 22; *U. S. v. Curtis,* (1882), C. C. N. Y. 12 Fed. 824; *35 Am. Jur.* 514; *39 Corpus Juris* 82; *21 Cal. Jur.* 892.

c. The advocacy of overthrow of constitutional government by force or violence by an employee of the government is an incompatible act on behalf of the employee. *U. S. v. Curtis*, C. C. N. Y., 12 Fed. 824.

d. The advocacy of the forceful overthrow of constitutional government by an employee thereof constitutes a breach of the contractural relationship by the employee. *U. S. v. Bryan*, 72 Fed. Supp. [illegible]; *Congress of Ind. Organizations v. City of Dallas*, 198 S. W. (2d) 143; *Communist Party v. Peek*, 20 Cal. (2d) 586; *Perez v. Board of Police Commissioners*, 78 Cal. App. (2d) 638.

e. The government has the obligation to determine whether its employees are violating the obligation of their contract or performing acts incompatible to the relationship. *United Public Workers v. Mitchell*, 330 U. S. 75, 91 L. Ed. 754; *United States v. Marzani*, 71 Fed. Supp. 615; *Barsky v. United States*, 167 Fed. (2d) 241; *Hayman v. City of Los Angeles*, 17 Cal. App. (2d) 674; *Communist Party v. Peek*, 20 Cal. (2d) 536; *Danskin v. San Diego Unified School Dist.*, 28 Cal. (2d) 536; *Perez v. Board of Police Commissioners*, 78 Cal. App. (2d) 638.

f. Government employees have the duty to respond to an oath and affidavit giving evidence as to whether they are breaching the contractural relationship or committing incompatible acts. *Hamilton v. University of California*, 293 U. S. 245, 79 L. Ed. 343; *Barsky v. United States*, 167 Fed. (2d) 241; *McAuliffe*

v. Mayor, etc. of New Bedford, 29 N. E. 517; *Christal v. Police Comm.*, 33 Cal. App. (2d) 564; *Hayman v. City of Los Angeles*, 17 Cal. App. (2d) 674.

g. Government has the right, in the exercise of its police power, to prescribe the qualifications of its employees and to attach reasonable conditions to their employment. *United Public Workers v. Mitchell*, 330 U. S. 75, 91 L. Ed. 754; *Hamilton v. University of California*, 293 U. S. 245, 79 L. Ed. 343; *Friedman v. Schwellenbach et al.*, 159 Fed. (2d) 22; *State v. Kirby*, 163 S. W. (2d) 990; *Ricks v. Dept. of State Civil Service*, 200 La. 341, 8 So. (2d) 49.

CONCLUSION

The joint petition for certiorari should be denied.

1. The petition is predicated upon basic errors.
   a. Petition is predicated on erroneous facts.
   b. Petition raises false questions.
   c. Petition contains false reasons for hearing.

2. Certiorari will not lie to review a constitutional question predicated upon imaginary facts not presented in the controversy.

3. The decision of the state court is supported by adequate and independent state grounds.

4. Certiorari will not lie to review the unnecessary decision of constitutional questions.

5. A petition for certiorari for the purpose of contesting the validity of a state statute under constitutional objections opens only for review the statute as construed by the state court.

6. The joint petition for certiorari presents no case or controversy.

7. Steiner is not an interested party.

8. The petition presents no debatable constitutional questions because the rights of the petitioners stem from a controversy involving the terms of their contract and not constitutional guarantees running to private citizens.

a. The advocacy of the forceful overthrow of constitutional government by an employee thereof constitutes both a breach of the contractural relationship and an incompatible act.

b. The government has the obligation to determine whether its employees are violating the obligation of their contract or performing incompatible acts.

c. Government employees have the duty to respond to an oath and affidavit giving evidence as to whether they are breaching the contractural relationship or committing incompatible acts.

9. Government has the right, in the exercise of its police power, to prescribe the qualifications of its employees and attach reasonable conditions to their employment.

WHEREFORE, respondents pray that the joint petition for writs of certiorari to the District Court of Appeal of the State of California, Second Appellate District, be denied.

Respectfully submitted,

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and
GERALD G. KELLY,
Deputy County Counsel,
and
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Counsel for Respondents.

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IN THE

SUPREME COURT

OF THE

United States

October Term, 1949

No. 49

HELEN PARKER, et al.,
Petitioners,
vs.
COUNTY OF LOS ANGELES, et al.,
Respondents.

No. 50

JULIA LEARNED STEINER,
Petitioner,
vs.
COUNTY OF LOS ANGELES, et al.,
Respondents.

BRIEF FOR RESPONDENTS

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WESTERN PRINTING COMPANY, WHITTIER

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IN THE

SUPREME COURT

OF THE

United States

October Term, 1949

No. 49

HELEN PARKER, et al.,
Petitioners,

vs.

COUNTY OF LOS ANGELES, et al.,
Respondents.

No. 50

JULIA LEARNED STEINER,
Petitioner,

vs.

COUNTY OF LOS ANGELES, et al.,
Respondents.

BRIEF FOR RESPONDENTS

I.

THE FACTS

The respondent Board of Supervisors of the County of Los Angeles did, on the 26th day of August, 1947, adopt the following Oath and Affidavit to be submitted

to each officer and employee under its jurisdiction (S. 17, P. 19):*

"OATH AND AFFIDAVIT

Department .....

A. Oath of Office or Employment

I, ..., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of California, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office or employment on which I am about to enter or am now engaged. So Help Me God.

B. Affidavit re Subversive Activity

I do further swear (or affirm) that I do not advocate, nor am I now a member, nor have I been since December 7, 1941, a member of any political party or organization that advocates the overthrow of the government of the United States, or State of California, or County of Los Angeles, by force or violence, except those specified as follows:

.....

and that during such time as I am an officer or employee of the County of Los Angeles, I will not

*References to the Steiner record will be thus: (S. 1) and to the Parker record thus: (P. 1).

advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles by force or violence.

C. Affidavit re Aliases

I do further swear (or affirm) that I have never used or been known by any names other than those listed as follows: ....."

Also included in the document is paragraph "D" (S. 18, P. 20) requiring such officers and employees to indicate whether they have ever been members of or supported any of some 142 named organizations.*

The petitioners, who are employees of the County of Los Angeles, filed a complaint on September 3, 1947 (seven days after the order of the Board of Supervisors adopting the oath and affidavit), seeking an injunction to prevent the respondents from proceeding to ask for information for the limited purpose of ultimately determining whether any of the County personnel personally advocate the overthrow of the government by force or violence. Petitioners also sought declaratory relief.

There was before the trial court petitioners' complaint, respondents' demurrer to the complaint, respondents' motion to strike and petitioners' order to show cause for preliminary injunction. In a memorandum opinion issued by the Honorable Frank G. Swain

*This list of organizations appears in S. 18, P. 20.

in the case of *Steiner v. County of Los Angeles*, Los Angeles Superior Court No. 534117, now 2nd Civ. 16587 (D.C.A.), 88 A.C.A. 487, by minute order adopted in *Parker v. County of Los Angeles*, Los Angeles Superior Court No. 534228, now 2nd Civ. 16588 (D.C.A.), 88 A.C.A. 487, respondents' demurrer was sustained; respondents' motion to strike was placed off calendar and the preliminary injunction denied. A copy of this memorandum opinion is attached as "Exhibit A" to this brief.

There was subsequently before the trial court petitioners' amended complaints (S. 1, P. 1), respondents' demurrer to the amended complaints (S. 23, P. 25), respondents' motion to strike and petitioners' order to show cause for preliminary injunction.

In a memorandum opinion issued by the Honorable Clarence M. Hanson on March 5, 1948 (S. 35, P. 35), respondents' demurrer was sustained without leave to amend. On March 9, 1948, a judgment of dismissal was entered (S. 34, P. 34), and notice of entry of judgment was given on the 10th of March, 1948 (S. 43, P. 43). On March 24, 1948, appellants served and filed notice of appeal (S. 45, P. 45).

The California District Court of Appeal, Second Appellate District, by written opinion (88 A.C.A. 476) (S. 47, P. 47) on November 12, 1948, affirmed the judgments of the Superior Court of the State of California in and for the County of Los Angeles entered March 9, 1948 (S. 34, P. 34), which sustained respon-

dents' demurrer to petitioners' amended complaints without leave to amend (S. 34, P. 34). The Supreme Court of the State of California denied a hearing (S. 49, P. 76).

II.

INTRODUCTORY STATEMENT

The primary question presented is whether the Board of Supervisors of the County of Los Angeles may proceed with a fact-finding program under which the officers and employees within its jurisdiction *are asked:* (P. 49) (1) to take an oath of allegiance to the federal and state constitutions and the laws of California as against all enemies of the United States of America, the State of California, and the County of Los Angeles; and (2) as such officers and employees to answer upon their oath or affirmation, (a) whether or not they advocate the overthrow of the government by force or violence and whether or not since December 7, 1941, they have been members of any organization or political parties that advocate the overthrow of the government by force or violence, as well as to sign an affidavit not to advocate the overthrow of the government by force and violence or to become a member of an organization or political party which so advocates so long as the person is a county officer or employee; (b) to state any aliases they have ever used or been known by; and (c) to indicate whether they have ever been a member of or directly or indirectly

supported any of the organizations listed in the affidavit submitted to them.

The petitioners allege that they are civil service employees of the County of Los Angeles. They further allege that the program of asking petitioners to execute an oath and affidavit must be enjoined and their rights declared as their constitutional guarantees have been violated. The amended complaints contain many allegations of surplusage, but the fundamental question before the court is the right of the respondent Board of Supervisors to proceed with a fact-finding program wherein petitioners are asked to take the oath and execute the affidavit.

We respectfully submit that the relationship between the parties in this litigation precisely defines and controls the rights of the parties involved. The petitioners have alleged that they are employees of the County of Los Angeles. (S. 1, P. 2). It is the County's position that while the petitioners may have the protection of certain constitutional guarantees in their capacity as private individuals, that there are most assuredly many instances where they do not have that protection in their capacity as public servants, and that the petitioners are before this court not as Private Individuals v. Government, but as Public Servants v. The People.

The important basic error in petitioners' position in this litigation is a misinterpretation of what was done under the Board order of August 26, 1947, as dis-

tinguished from what the Board might do in the future. It must at all times be remembered that this lawsuit involves only the validity of the order of the Board of Supervisors of August 26, 1947, which is pleaded by reference in petitioners' amended complaints. This order did not make the execution of the oath and affidavit a condition of employment.

The issue before the court is whether the County can conduct a fact-finding inquiry including the request that County Officers and employees give information relative to advocacy of the forceful overthow of the government they are hired to represent. The issue is not whether the employees will, at some future time after the 26th day of August, 1947, be ordered discharged because of information ascertained, or because of the employee's refusal to give information required.

The issue is whether the County can ascertain the information. It is the County's position that it may ascertain the facts, and that the fact-finding inquiry in itself does not involve any of the petitioners' constitutional rights.

III.

THE ISSUE IS NARROW AND LIMITED

The construction of the state court of the pleadings and Board of Supervisors' order limits the facts to the adoption by the Board of Supervisors by its order of August 26, 1947, of an oath and affidavit to be submitted to County officers and employees without any penalty for failure to execute or penalty because of any information furnished by answer in the oath and affidavit.

The people of the County of Los Angeles, through their elected representatives, the Board of Supervisors, did by order of August 26, 1947, adopt an oath and affidavit to be submitted to the holders of positions in County Government. Petitioners' position is based upon the erroneous assumption that refusal to take the oath and sign the affidavit has been made a ground of discharge (P. 5, S. 4, Petition for Writs of Certiorari; Petitioners' Special Reply, p. 6). This position is contrary to the written letter which is alleged by petitioners to be the order adopted by the Board of Supervisors, copy of which is attached to the complaints, marked Exhibit "A". It is further contrary to the precise terms of the oath and affidavit, the adoption of which by the Board of Supervisors' order of August 26, 1947, is the issue in this litigation. In addition, petitioners' contention is contrary to the specific interpretation contained in the decision of the

highest state court reviewing the Board order and oath and affidavit (P. 59-63, S. 47).

In California, allegations in the body of the complaint as to the contents of a written instrument, a copy of which is attached thereto and which allegations are contrary to the terms of that written instrument are surplusage and are to be disregarded on general demurrer. *Alphonzo E. Bell Corp. v. Bell, etc. Synd.*, 46 Cal. App (2d) 684, 691, 116 P. (2d) 786; *Washer v. Bank of America*, 21 Cal. (2d) 822, 829, 136 P. (2d) 297; *Pimentel v. The Hall-Baker Co.*, 32 Cal. App. (2d) 697, 701, 90 P. (2d) 588; *Bashford v. A. Levy & J. Zentner Co.*, 123 Cal. App. 204, 209, 11 P. (2d) 51; *Peak v. Republic Truck Sales Corp.*, 194 Cal. 782, 790, 230 Pac. 948.

Furthermore, in California, allegations of fact in a body of a complaint contrary to law or impossible in law are not admitted on general demurrer and are surplusage. *Griffin v. County of Colusa*, 44 Cal. App. (2d) 915, 918, 113 P. (2d) 270. Under the order of August 26, 1947, no penalty has been prescribed by the Board of Supervisors for refusal to take the oath or sign the affidavit. Nor has any penalty been prescribed for any employee who states that he is a member of any of the named organizations.

Petitioners have sought certiorari to the Supreme Court of the United States upon the claim:

> "Any county employee, including petitioners, who fails or refuses to execute the Oath and Af-

fidavit *is to be discharged* from county employ (P. 5; S. 4)." Petition for Writs of Certiorari, p. 6) (Italics ours).

Upon the further claim:

"That which the Loyalty Order on its face requires as a condition of employment the County officers have threatened to *enforce by discharge or other penalty.*" (Petitioners' Special Reply Memorandum, p. 7) (Italics ours.)

And upon the further claim:

". . . (T)he portion of petitioners' complaint challenging *per se* the right of the County to require execution of the oath and affidavit on pain of *discharge for refusal to sign.*" (Italics ours) (Petitioners' Special Reply Memorandum, p. 6).

It is respectfully submitted that this is not the issue before this court. It was certainly not the issue in the highest court of the State passing on the question, and that court in its written opinion made this clear by declaring:

"Whether the appointing power will or will not discharge employees as claimed by the plaintiffs, for causes of the character enumerated, and whether the Civil Service Commission will uphold such discharges, if any, on such causes, are not matters upon which this Court may speculate or adjudicate at this time. . . ." (S. 47, P. 63).

The District Court of Appeal further declared:

> "From what has so far been said, it is self-evident that neither the Board nor its agents can discharge a civil service employee for any cause that the Civil Service Commission finds insufficient." (S. 47, P. 59).

The limited nature of the question for review involves solely an order of the Board of Supervisors directing that County officers and employees execute an oath and affidavit relating to the advocacy of the overthrow of government by force or violence, with no penalty specified for failure to execute.

The broad claims by petitioners as to what the County was requiring were pared down by the application of the doctrine of surplusage as set forth in the preceding cases. The issue is not whether the County may delve into thoughts and beliefs of its employees but whether the County may seek information about advocacy of the forceful overthrow of the government by the very people that were hired to represent that government. As the inquiry is restricted to advocacy, and as one may advocate only by writing, speeches, and action, it is idle to argue the issue of delving into thoughts and beliefs as the issue is not present.

The facts before this Court are those facts set forth in precise detail in the decision of the District Court of Appeal of the State of California, which was the highest court of the State passing upon the question. Under California procedure, if the District Court of Appeal relates the facts upon which it has predicated

its opinion and the appellants do not seek a petition for rehearing before the District Court of Appeal urging an error in the facts as related by the District Court of Appeal, these facts become the conceded facts in the litigation, and in a petition for hearing before the Supreme Court of the State of California, those facts alone are the facts upon which that court determines whether it will consider the matter. Therefore, under California procedure, petitioners are, in the balance of this litigation, bound by the recital of facts set forth in the decision of the District Court of Appeal, because they did not file a petition for rehearing urging an error in the facts. Rules on Appeal for the Supreme Court and District Courts of Appeal of the State of California; Rule 29b provides:

> "On petition for hearing, the Supreme Court will not examine the record for error, or inquire into the correctness of the facts stated in the opinion unless the petition shows (1) that material facts were omitted from or incorrectly stated in the opinion of the District Court of Appeal and that the alleged omission or other inaccuracy was set forth in a petition for rehearing and was not corrected by the District Court of Appeal; or (2) that substantial legal issues raised in the brief were not considered in the opinion, and that the failure to consider them was set forth in a petition for rehearing."

The State court's conclusion as to the scope of the Board order and oath and affidavit is binding upon the

Supreme Court of the United States. *Kovacs v. Cooper*, 93 L. ed. (Advanced Opinions) 379, 385; *Saia v. New York*, 334 U. S. 558, 92 L. ed. 1574; *Cox v. New Hampshire*, 312 U. S. 569, 574, 85 L. ed. 1049, 1052; *Winters v. New York*, 333 U. S. 507, 514, 92 L. ed. 840, 849; *Wilson v. North Carolina, ex rel. Caldwell*, 169 U. S. 586, 42 L. ed. 865; *Pennekamp v. Florida*, 328 U. S. 331, 90 L. ed. 1295; *Fox v. Washington*, 236 U. S. 273, 59 L. ed. 573; *Herndon v. Lowry*, 301 U. S. 242, 81 L. ed. 1066.

IV.

NATURE OF OATH AND AFFIDAVIT

The oath and affidavit does not differ substantially from the oath required of officers under Article VI of the United States Constitution. All civilized governments require their officers to take an oath of allegiance, by which the prospective office holder swears to bear true faith and allegiance to the government lawfully selected by the people.

In this country the holder of a position of public trust is required to swear to support the Constitution, the words "the Constitution" being used as representative of the sovereign power which stems from the will of the people. The true spirit, intent, and meaning of the Constitutional oath is to bear true faith and allegiance to the form of government lawfully chosen by the people. It certainly was not the intention that

the officer should merely be required to support the parchment upon which the Constitution was written; nor in taking the oath to support the government does the officer swear allegiance to the individuals who administer it. It is fidelity to the form of government that was organized by the Constitution that is required. Such being the object of the Constitutional oath, the affidavit does not go beyond it and require other conditions. Paragraph "A" of the oath and affidavit follows the general language of the Constitution. Paragraph "B", the second clause, is but an amplification for a more complete expression of the same terms, more fully defining the meaning of the previous clause, expressing in clear language its legal effect. *If the holder of a position of public trust is required to support the Constitution of the United States and this Constitution contains within its terms a procedure for an orderly mode of change, then he cannot advocate a change by force or violence.* Such an advocacy would be directly contrary to the express terms of the Constitution and not in support of the Constitution.

As to Paragraph "D", the California Legislature has determined that certain organizations contain members that advocate the overthrow of government by force or violence. The purpose of Paragraph "D" is to ascertain, first, whether any employees of the County are members of these organizations. If they are not members, then the County would not be required to inquire further into the activities of any

county officer or employee in such organizations to determine whether the employee personally advocated the overthrow of government by force and violence by his personal activity in said organization. Obviously, if after receiving the oaths and affidavits, the County is informed that none of the employees are members of these organizations, it is unnecessary to proceed any further. However, if the affidavits show that some County officers and employees are members of the organizations, then there exists merely evidentiary matter which needs pursuit and clarification by other investigatory means. The County would then have to determine whether or not the employee personally advocated the overthrow of government by force and violence. Obviously, he can only advocate by either speech, writing, or actions, and the County would have to determine and prove by direct evidence that he made speeches or had written articles or had engaged in direct actions personally advocating overthrow of the government by force and violence. In this respect, membership is meaningless. There could be an organization having one hundred members, 99 of whom advocated the overthrow of government by force or violence. One public employee might have joined the organization with the sole purpose of converting the 99 members to precisely the opposite view. On the other hand, he might have joined an organization having a hundred members of whom five advocate the overthrow of government by force or violence and

after a period of thirty days be converted by the five and personally advocate the overthrow of government by force or violence.

Therefore, the membership is but the evidentiary lead which, if it exists, must then be followed by the people to its source to determine the personal advocacy of each employee.

A. There Is No Imputation of "Guilt by Association."

Guilt by association is the determination that a man is judged by the company which he keeps. If the company is bad, he must be bad. There is no imputation of such guilt in the Board of Supervisors' order of August 26, 1947. There is no inference that the listed organizations are subversive. There is no inference that appellants are subversive if they belong to every organization listed. An employee can indicate membership in every organization listed, and he will still be employed and he will not be "publicly" reported or "discharged" or penalized.

The oath and affidavit is not a "test" oath as referred to in *Cummings v. Missouri*, 71 U. S. 277, 18 L. ed. 356, and *Ex Parte Garland*, 71 U. S. 333, 18 L. ed. 366. There, the State in effect said to the person seeking the public office, "If you were ever in the Confederate Army, you cannot work for the government." Therefore, in the *Cummings and Garland* cases, the court was considering the type of an oath which was phrased in such language that the applicant

for public office could not execute it if he had done a certain thing in the past.

This is precisely contrary to the oath and affidavit adopted by the Board of Supervisors. The letter pleaded as a part of Exhibit "A" to the amended complaints states affirmatively and specifically:

> " . . . (W)e wish to make it clear that the mentioning of the name of an organization in these reports does not necessarily mean and is not intended to convey the implication that they are subversive . . . " (P. 17, S. 16).

and

> "By way of summary, it is to be emphasized that the organizations set forth in the list, which is part of the affidavit, that by their designation there it is not intended to infer that they are necessarily subversive or Communistic, . . . " (P. 18, S. 16).

There is, therefore, no guilt by association but merely an executive order of the governing Board of the County seeking information which may be used as an evidentiary lead to later determine from other evidence whether or not the employee personally advocates the overthrow of government by force or violence.

The people of the County of Los Angeles have proceeded upon the theory that the public office holders and employees who are acting as their representatives have no protected constitutional right to actually over-

throw by force or violence the form of government lawfully chosen by the people. The people are asking their representatives to execute an oath and affidavit that they will not, while holding positions as public agents, advocate the overthrow by force or violence of the government that they are representing.

V.

PETITIONERS ARE BEFORE THIS COURT SEEKING A REVIEW OF THEIR RIGHTS STEMMING FROM THEIR STATUS AS HOLDERS OF POSITIONS OF PUBLIC TRUST AND NOT THEIR CONSTITUTIONAL RIGHTS AS PRIVATE CITIZENS.

This is a law suit between the people of the County of Los Angeles and their representatives.

The crux of this case turns on the status of the petitioners. The petitioners are before this court not as private citizens but as holders of positions of public trust.

This status cannot be overemphasized.

The petitioners allege that they are "in the classified Civil Service (of the County of Los Angeles) with permanent status." (S. 1, P. 2).

This permanent cadre of public officers and employees in the civil service (of which petitioners are a

part) is a political invention of the 19th century. These individuals are not chosen by the people. They are not directly accountable to the people. Of the 22,000 positions in the public service of the County of Los Angeles, only eight are elective officials. All other persons exercising powers granted by the Charter of the County of Los Angeles or the statutes of the State of California possess permanent Civil Service status. Those few officers who are politically responsible for their actions find their work thrown back more and more into the field of broad general policy. The implementation of that policy they must leave to the permanent cadre of Civil Service. As a result, there springs into existence a vast body of officials and employees with executive powers, who, in a greater part of their work, operate under no effective responsibility to the people. This body of public employees constitutes a potential threat of arbitrary action by simply abusing the power that it has. This cadre may, if it wishes, exercise a tacit veto upon any measure desired by the people which is displeasing to it simply by refraining from putting it into effect. This it can oftentimes do without the public being aware of its activity merely by confusing the issue in a welter of red tape, contradictory rulings, and shirking responsibility. (Reference: Section 645, "Government by Merit" by Lucius Wilmerding, Jr.).

The United States Supreme Court has recognized the existence of this unfortunate possibility. Mr.

Justice Douglas dissenting in *United Public Workers v. Mitchell,* 330 U. S. 75, 91 L. ed. 754, but concurring in the validity of the Hatch Act as to administrative employees of the United States Civil Service, declared, at page 784:

> "The civil service system has been called 'the one great political invention' of nineteenth century democracy. The intricacies of modern government, the important and manifold tasks it performs, the skill and expertise required, the vast discretionary powers vested in the various agencies, and the impact of their work on individual claimants as well as on the general welfare *have made the integrity, devotion, and skill of the men and women who compose the system a matter of deep concern of many thoughtful people.* Political fortunes of parties will ebb and flow; top policy men in administrations will come and go; new laws will be passed and old ones amended or repealed. But those who give continuity to administration, those who contribute the basic skill and efficiency to the daily work of government, and those on whom the new as well as the old administration is dependent for smooth functioning of the complicated machinery of modern government are the core of the civil service. If they are beneficiaries of political patronage rather than professional careerists, serious results might follow—or so Congress could reasonably believe. Public confidence in the objectivity and integrity of the civil service system might be so weakened as to jeopardize the effectiveness of administrative government." (Italics ours.)

The prevention of concentration of power in public officials and employees who could use this power in an arbitrary manner without accountability to the people was one of the main motivating factors in the Constitutional Convention.

Excerpts from "The Making of the Constitution" by Charles Warren make this clear:

"Madison said that he 'considered the popular election as essential to every plan of free government. . . . '" (Page 160).

"'He wished for vigor in the government, but he wished that vigorous authority to flow immediately from the legitimate source of all authority. The government ought to possess, not only, first, the force, but secondly, the mind or sense of the people at large. The Legislature ought to be the most exact transcript of the whole society. Representation is made necessary only because it is impossible for the people to act collectively.' Mason said that in the new government the people and not the States will be represented. 'They ought, therefore, to choose the representatives. The requisites in actual representation are that the representatives should sympathize with their constituents, to think as they think and feel as they feel, and that for these purposes should even be residents among them.'" (Page 162).

"'They (the representatives) are of the People and return again to mix with the People, having no more durable pre-eminence than the different grains in an hourglass; such an Assembly cannot

easily become dangerous to liberty; they are the servants of the People, sent together to do the People's business' so wrote Franklin in picturesque language (Franklin to Whatley, May 23, 1788)" (Page 163).

"Fear of a return of Executive authority like that exercised by the Royal Governors or by the King had been ever present in the states from the beginning of the Revolution." (Page 173).

" 'That all power is vested in, and consequently derived from the people, that magistrates are their trustees and servants and at all times amenable to them. . .' " (Page 349).

" 'Having for his primary object, for the polestar of his political conduct, the preservation of the rights of the people, he held it as an essential point, as the very palladium of civil liberty, that the great officers of state and particularly the Executive, should at fixed periods return to that mass from which they were at first taken, in order that they may feel and respect those rights and interests which are to be again personally valuable to them.' " (Quoting from Mason). (Page 363).

"This view (see quote above from Mason) was shared by Dr. Franklin who said that 'in free Governments, the rulers are the servants, and the people their superiors and sovereigns. . .' " (Page 364).

Actually whether a public officer or employee will be a servant of the people or a master depends upon what he advocates. That he has power to be a master is undeniable. For example: A judge is selected by the people, and immediately upon taking office has

the *power* to sentence any one of the citizenry to the penitentiary. A deputy sheriff is selected on behalf of the people, and immediately upon taking office he may arrest any one of the very people authorizing his employment. A fireman may enter the premises of any one of the citizenry and destroy his property for the purpose of preventing fire. The health department employee has the power to quarantine any one of the citizenry. The agricultural inspectors have the power to condemn trees and crops belonging to any citizen. A deputy assessor has the power to enter the premises of a citizen and determine the assessed valuation. A building inspector may stop construction of a citizen's home.

If the office holder uses this power properly, he is a public servant. If he uses it improperly, he is a master of the very people who gave him the power.

Because of the fact that the people of this county authorize the employment of persons who have the possibility of becoming the masters of the very people who authorize their employment, the citizens have the right to know whether or not their employees are now acting and will continue to act as public servants and conform to the principles of our guaranteed form of government, or whether these agents will embark upon a program to destroy and overthrow by force or violence the very form of government that they were appointed by the citizenry to administer and protect.

To allow a County employee to prevent the citizens of the County of Los Angeles from asking information

relating to his qualifications as a county employee by the simple device of hiding behind the claim that his alleged civil rights, not as an employee but as a private citizen, have been violated, gives to that public employee the claim of infallibility. The invocation of the doctrine of infallibility of holders of positions of public trust is the beginning of totalitarian government, wherein the citizen is entirely subordinated to the state.

Public servants are charged with the duty and charged with the public trust of representing the citizens of the government by whom they are employed, and these citizens are entitled to know whether a public servant intends to breach this trust.

> "When a man assumes a public trust he should consider himself a public property." Thomas Jefferson from "Rayner's Life of Jefferson," p. 365.

If we have arrived at a point where the citizens cannot examine into the operation of their government by inquiring into the actions and conduct of their representatives, who may advocate and work toward and may upon the first opportunity engage in the overthrow of government by the use of force, we have ceased to have a form of government of the people, by the people, and for the people.

Government should be responsible to the will of the people. *Stromberg* v. *California,* 283 U. S. 359, 75 L. ed. 1117; *West Virginia State Board of Education* v. *Barnett,* 319 U. S. 624, 87 L. ed. 1628; *Terminiello* v. *Chicago,* 337 U. S. 1 (preliminary print) 93 L. ed. Advanced Opinions (No. 15) 865.

The protection to the people against a concentration of power in public officials and employees who could use this power in an arbitrary manner without accountability to the people lies in the rights of the people and the duties of the employees under the employment contract and the requirements of the Constitution.

VI.

RESPONDENTS' POSITION

Summary

Petitioners, who are holders of positions of public trust, claim that the mere order of the Board of Supervisors adopting the oath and affidavit violates their civil rights on the ground that their constitutional rights of freedom of speech and due process, as preserved by the First and Fourteenth Amendments, are violated. The answer of the people is predicated upon three distinct grounds: A. Implied Contract, B. Constitutional Exercise of Police Power, C. Affirmative Constitutional Grant of Power.

Each or any one of these three separate premises will establish that the petitioners have the duty to actually execute the oath and affidavit. Obviously if their constitutional rights are not impaired by the duty to actually execute the oath and affidavit, then their rights are most certainly not impaired by being asked to execute such an oath and affidavit.

A. Implied Contract.

Petitioners' constitutional right (assuming that it exists) to advocate forceful and violent overthrow of the government that they are hired to represent and to refuse to give information on this subject is suspended by the implied terms of their contract of employment.

1. Petitioners, as County employees, impliedly covenant that they will not advocate destruction by force or violence of their government employer.

2. Petitioners, as County employees, also covenant that the people have the right and duty to ascertain if petitioners, as their representatives, advocate the overthrow of the government by force or violence and petitioners have agreed to give information to the people as to whether they so advocate.

3. Obviously, if the petitioners have contracted that they will not advocate the overthrow by force or violence of the government that they are hired to represent and that they will give the people information pertaining to this subject, then the petitioners cannot complain that the submission to them of an oath and affidavit giving them an opportunity to abide by their contract violates their constitutional rights.

4. The right to determine that these implied covenants are qualifications for state positions is a power reserved to the states.

5. Petitioners' cases distinguished.

B. Constitutional Exercise of Police Power.

Assuming no implied covenant to abstain from overthrowing the government by force or violence, and to give information on this subject, and further assuming that the constitutional guarantees of freedom of speech and due process under the First and Fourteenth Amendments apply to petitioners, their constitutional rights have not been violated because the oath and affidavit program is a proper exercise of the police power.

1. The constitutional guarantee of freedom of speech assured against Federal law in the First Amendment and against State action in the Fourteenth Amendment is not absolute.

2. The State may, in the exercise of its police power, prevent its destruction so long as (a) the state action bears appropriate relation to the safety of the state; (b) it is not vague and indefinite; (c) the clear and present danger rule is satisfied.

a. The State action bears appropriate relation to the safety of the state.

b. The oath and affidavit adopted by the Board of Supervisors by order of August 26, 1947, is not vague and indefinite.

(1) Theory of denial of due process because of vague and indefinite standards applies only where there is an exaction of obedience.

(2) Assuming there is a compulsion on petitioners to answer, the language of the oath and affidavit has a well-recognized meaning.

(3) The interpretation of the Board order by the highest court of the State reviewing the matter should be given consideration.

c. The oath and affidavit meets the clear and present danger test, if that is applicable.

(1) The clear and present danger rule applies to state *action*, not to state *inquiry*.

(2) As holders of positions of public trust are possessed of a tremendous power over the private citizenry, then if the public servant advocates forceful overthrow of the government chosen by the people whom the public servant is hired to represent, an inherent clear and present danger exists.

(3) Here the state has determined that advocacy of overthrow of the government by force or violence by holders of positions of public trust constitutes a clear and present danger of such substantive evil that it should be prevented by exercise of the police power.

(4) The "clear and present danger" relates to the evil of advocacy of violent overthrow of the government by an employee thereof, and such advocacy is one of the substantive evils which the people have the right to prevent.

C. Affirmative Constitutional Grant of Power.

There is an affirmative grant of power to the people in Article VI, Clause 3, of the United States Constitution to require oaths of holders of positions of public trust.

We shall now discuss these points in the order named:

A. Implied Contract.

Petitioners' constitutional right (assuming that it exists) to advocate forceful and violent overthrow of the government that they are hired to represent and to refuse to give information on this subject is suspended by the implied terms of their contract of employment.

1. Petitioners, as County employees, impliedly covenant that they will not advocate destruction by force or violence of their government employer.

This principle of law is so firmly established in American Jurisprudence that no effort will be made to digest a series of independently cited cases. As stated in 35 *Am. Jur.* at p. 514 under the subject of "Employee's Duty to Employer," the principle is set forth as follows:

> "Aside from any duties expressly imposed upon or undertaken by the employee in the contract of employment, the law implies various obligations and undertakings by an employee in entering into a contract of employment. It implies an under-

taking on his part that he is competent to perform the duties for which he is hired, and is possessed of the requisite skill and knowledge to enable him to do so, and that he will do that work in a careful and workmanlike manner; that he will yield obedience to all reasonable rules, orders and instructions of the employer; and that he will conduct himself with sobriety and such decency and propriety of deportment as not to work injury to the business of his employer. *The law implies an agreement on the part of the servant or employee to faithfully serve and be regardful of the interest of his employer during the term of his service,* carefully discharge his duty to the extent reasonably required by the relation of employer and employee, and to treat his employer with respect." (Italics ours.)

Please also see 39 *Corpus Juris,* page 82 under the title, "Adverse or Disloyal Interests of Employee." Therein it is stated:

"One who asserts an interest adverse or disloyal to his employer commits a breach of the implied condition of the contract of employment subjecting him to discharge."

The Court stated in *Brown et al.* v. *Dupuy,* 4 Fed. (2d), 367 at 368-369:

"2 Williston on Contracts, sec. 1022, p. 1923, lays down the rule that: 'The duty of fidelity to his employment imposes on the employee not simply the positive duty of reasonably skillful performance of the work intrusted to him, but the

negative duty of refraining from deception, and from entering into relations giving him an interest inconsistent with that of the employer. Thus deceptive and fraudulent statements or conduct not only renders the employe liable, but justifies his discharge.' "

Again in *Miller* v. *Jones*, 178 Iowa 168, 159 N. W. 671, at 672, the court stated:

". . . It was not necessary that plaintiff's misconduct should have, in fact, injured the defendant. It was enough that it had the tendency, or might reasonably have led to his injury. Defendant did not have to wait until injury was done before discharging the plaintiff. If plaintiff's conduct was such as to indicate that his interests were hostile to those of his master, it was the right of the master to discharge him before any injury was in fact done . . . It is well settled that a servant must do nothing in hostility to his master's interests. If he defrauds his master, or attempts to do so, or lends himself to aid others in defrauding him, or exposes the master to danger of loss even though none is in fact sustained, the master may discharge him for violation of an implied condition of his contract; and so the master may discharge him if he places himself in relations with others that are inconsistent with his duties to the master, or such as to jeopardize his interests. *Adams Express Co.* v. *Trego*, 35 Md. 47; *Deane* v. *Cutler* (Super. Ct.) 20 N. Y. Supp. 617."

Also see *Osburn* v. *De Force*, 122 Ore. 360, 257 Pac. 685, wherein it was said, at 689:

"Every contract of employment implies an engagement on the part of the employee to be faithful to his employers' interests and loyal to his employers."

In the case of *Puritas Laundry Co.* v. *Green*, 15 Cal. App. 654, 115 Pac. 660, it is stated, at 15 Cal. App. 660:

"'Manifestly, when a servant becomes engaged in a business which necessarily renders him a competitor, a rival of his master, no matter how much or how little time he devotes to it, he has an interest against his duty. It would be monstrous to hold that the master was bound to retain the servant in his employment after he has thus voluntarily put himself in an attitude hostile to his master's interests.' (*Dieringer* v. *Meyer* 42 Wis. 311, 24 Am. Rep. 415. . .)"

These general principles establishing the proposition that all employees impliedly covenant that they will not destroy their employer are carried forward with complete force into the relationship of public employee and government. We can conceive of no greater attempt by an employee to destroy his employer's business than that of a public servant who actually advocates use of force or violence to overthrow the very government by whom he was employed.

The advocacy of overthrow of constitutional government by force or violence by an employee of that government is a breach by the employee of the relationship of government employer and public servant employee.

It is universally held "a public officer is impliedly bound to exercise the powers conferred upon him with disinterested skill, zeal, and diligence, and primarily for the benefit of the public." (*Hornung v. State*, 116 Ind. 458, 19 N. E. 151, at 153.)

> "Dealings between a public officer and himself as a private citizen which bring him into collision with the other citizens equally interested with himself in the integrity and impartiality of the officer are against public policy. *Goodyear* v. *Brown*, 155 Pa. 514, 26 A. 665, 20 L. R. A. 838, 35 Am. St. Rep. 903." *Noble* v. *City of Palo Alto*, 89 Cal. App. 47, 264 Pac. 529, at 531.
>
> "Nevertheless, the organization and activity in organizations of public officers and employees is subject to some regulation for the public welfare. See United Public Workers v. Mitchell, 330 U. S. 75, 67 S. Ct. 556, 91 L. Ed.—; Oklahoma v. United States Civil Service Commission, 330 U. S. 127, 67 S. Ct. 554, 91 L. Ed. —; King v. Priest, Mo. Sup., 206 S. W. 2d 547, and cases therein cited. This is because a public officer or employee, as a condition of the terms of his public service, voluntarily gives up such part of his rights as may be essential to the public welfare. . . . " *City of Springfield* v. *Clouse*, 356 Mo. 1239, 206 S. W. (2d) 539, at 542.

As to public officers and employees, 21 *Cal. Jur.* 892 states the rule:

> "The mere acceptance of an office, however, carries with it the obligation to exercise good faith

and diligence even in the absence of express provision upon the subject."

There is little doubt of the principle that a public employee may not retain his status and simultaneously advocate the destruction of his employer. The case of *Pawell* v. *Unemployment Compensation Bd. of Review*, 146 Pa. Super. 147; 22 Atl. (2d) 43 in speaking of the status of a public employee states, at p. 45:

> "In every employment there are implied covenants and conditions in addition to those specifically appearing in the contract. The ordinary virtues of honesty and loyalty are assumed. One may be dishonest in other than money matters and in general it hardly can be said that an employee who is awaiting the occasion to destroy his employer's business . . . has not violated his implied covenant of reasonable loyalty, . . ."

2. Petitioners, as County employees, also covenant that the people have the right and duty to ascertain if petitioners, as their representatives, advocate the overthrow of the government by force or violence and petitioners have agreed to give information to the people as to whether they so advocate.

The California courts have made it very clear that in California the employment contract implies the covenant by the public servant that the people may inquire of their employees to determine whether such employees have breached their contract.

In *Perez v. Board of Police Commrs.*, 78 Cal. App. (2d) 638 (178 P. 2d 537), it was stated, at p. 651, in affirming the right of the city to prevent union membership of policemen:

> "All public officials, whether national or state, executive, administrative or judicial, and all public employees, are public servants. There is but one master, the people. Hence, the common expression that, 'This is a government of laws and not of men.' The allegiance of all public servants is to the people; obviously there can be neither alienation nor division of this allegiance if constitutional government is to continue. *The police commission, therefore, not only had the power but it was the manifest duty to adopt and enforce the resolution herein considered.* (Resolution preventing union membership). The failure to do so in effect would have amounted to a surrender of power, a dereliction of duty, and a relinquishment of supervision and control over public servants it was their sworn duty to supervise and direct." (Italics ours.)

Likewise, in *Hayman v. City of Los Angeles*, 17 Cal. App. (2d) 674 (62 P. (2d) 1047), the court stated at 678:

> "He (the discharged employee of the City of Los Angeles) seeks to justify his activities (soliciting union membership from city employees) upon the ground of his constitutional right of freedom of speech and assembly. The right which is in-

volved here is not that which petitioner thinks has been denied him, but is the right of respondents to exercise a reasonable supervision over city employees, to the end that proper discipline may be maintained and that activities among employees be not allowed to disrupt or impair the public service. *Such is not only the right but the duty of the city and its several departments.* In the exercise of this duty they must be allowed a wide discretion and their acts are not subject to review by the courts until they have reached the point of illegality." (Italics ours.)

The Supreme Court of California has held that the people have the right to use a test for the purpose of ascertaining information from those seeking public office. This principle is declared in *Communist Party v. Peek*, 20 Cal. 2d 536 (127 P. 2d 889) at p. 551:

> "There is no doubt, however, that the remainder of section 2540.4 comes within the Legislature's power to prescribe tests and conditions for participation in primary elections. *This power certainly includes the right to adopt tests designed to exclude those political parties advocating the overthrow of the government by unlawful means or those parties carrying on a program of sabotage, force and violence, sedition or treason.*" (Italics ours.)

The same rule applies to doctors (*Hawker v. New York*, 170 U. S. 189, 42 L. ed. 1002) and attorneys (*In re Summers*, 325 U. S. 561, 89 L. ed. 1795).

The high courts of other states have found that this implied covenant of inquiry of public servants exists in the people. In the case of *Kennett v. Barber*, 159 Fla. 81, 31 So. 2d 44, the Supreme Court of Florida was examining a situation wherein a city fireman was discharged for conduct unbecoming an employee of the city because outside of office hours, while intoxicated he had grabbed the arm of his pregnant wife, thrown her to the ground and then proceeded to bruise, beat and batter a second woman. In discussing the city's right to inquire into the employee's conduct the court stated:

> "By this yardstick *the City of Miami Beach would certainly be authorized to inquire* into the private character and conduct of a member of its Fire Department, and determine whether it met the standard required of those who seek employment at its hands. *After they are employed one's character is subject to inspection at all times.* No business is required to keep one in its employ who is known to be stealing, cheating, gambling or who is guilty of other conduct embarrassing to or inimical to the interest of his employer." (Italics ours.)

For right to inquire of Federal employees, please see the case of *United States v. Marzani*, 71 Fed. Supp. 615 (affirmed in 168 F. 2d 133, affirmed by divided court in 93 L. ed, Advanced Opinions 196.), wherein it is stated at p. 620:

"One of the authorized functions of governmental departments and agencies, particularly in time of war, *is to see that their employees are loyal to our democratic form of government and no other.*" (Italics ours.)

The right involved here is not the constitutional right of freedom of speech but the right of the government to exercise a reasonable supervision over public employees. *Washington v. Clark,* 84 Fed. Supp. 964; *Communist Party v. Peck,* 20 Cal. (2d) 536, 127 P. (2d) 889.

It is equally clear in California that the public servant contract includes the implied covenant of the public employee to answer to the people, when inquiry is made, as to his advocacy of forceful overthrow of his government employer.

Duty requires the public servant employee to take an oath and sign an affidavit seeking only information which will constitute a factual lead whereby the government might determine whether he advocates its overthrow by force or violence.

In *Christal v. Police Commission,* 33 Cal. App. (2d) 564, at p. 568 (92 P. 2d 416) the court said:

"As we view the situation, when pertinent questions were propounded to appellants before the grand jury, the answers to which questions would tend to incriminate them, they were put to a choice which they voluntarily made. *Duty required them to answer.* Privilege permitted them to refuse to

answer. They chose to exercise the privilege, but the exercise of such privilege was wholly inconsistent with their duty as police officers. They claim that they had a constitutional right to refuse to answer under the circumstances, but it is certain that they had no constitutional right to remain police officers in the face of their clear violation of the duty imposed upon them. (*McAuliffe v. Mayor of New Bedford*, 155 Mass. 216 (29 N. E. 517).)" (Italics ours.) (Please also see *Congress of Industrial Organ. v. City of Dallas*, 198 S. W. (2d) 143).

It is respectfully submitted that the authorities in this point have established:

First, that the advocacy of overthrow of government by force and violence by an employee thereof is contrary to the implied-in-law covenant in his contract with the people.

Second, that the people have by this implied contract the right and duty to determine if their representatives in the permanent civil service presently advocate the overthrow of the government by force and violence.

Third, that the petitioners as holders of positions of public trust have the duty under the terms of their contract to give information to the people as to whether they so advocate.

3. Obviously, if the petitioners have contracted that they will not advocate the overthrow by force or

violence of the government that they are hired to represent and that they will give the people information pertaining to this subject, then the petitioners cannot complain that the submission to them of an oath and affidavit giving them an opportunity to abide by their contract violates their constitutional rights.

Petitioners' position is like that of a movie extra player who agrees as a condition of her employment contract that she will remain within a certain area and keep her employer advised of her whereabouts, then when her employer makes inquiry of her whereabouts she immediately complains that her constitutional guarantees of freedom of travel and freedom of speech are being violated.

In the instant case, petitioners wish to refuse to perform their contractual duties but notwithstanding remain holders of positions of public trust.

Petitioners' rights must be determined pursuant to the implied covenants of their employment contract. Petitioners' constitutional rights as private citizens not subject to such a contract are not in issue.

Petitioners' theory rests entirely upon the presumed existence of unlimited constitutional rights. However, petitioners' unlimited constitutional rights are suspended while they are subject to their contract.

As early as 1892 this doctrine was recognized. In the case of *McAuliffe v. Mayor, etc., of City of New Bedford,* 155 Mass. 216, 29 N. E. 517, Mr. Justice

Holmes, then sitting on the Supreme Court of Massachusetts, had before him a petition for mandamus to restore the petitioner to the office of policeman in the City of New Bedford. The petitioner had been removed by the Mayor after a hearing because he violated a rule which read (p. 517):

> "'No member of the department shall be allowed to solicit money or any aid, on any pretense, for any political purpose whatever.' *There was also evidence that he had been a member of a political committee, which likewise was prohibited.*" (Italics ours.)

Mr. Justice Holmes stated, at p. 517:

> ". . . It is argued by the petitioner that the mayor's finding did not warrant the removal; that the part of the rule violated was invalid, as invading the petitioner's right to express his political opinions; . . . One answer to this argument . . . is that there is nothing in the constitution or the statute to prevent the city from attaching obedience to this rule as a condition to the office of policeman, and making it part of the good conduct required. The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. *There are few employments for hire in which the servant does not agree to suspend his constitutional rights of free speech as well as of idleness by the implied terms of his contract.* The servant cannot complain, if he takes the employment on the terms

which are offered him. On the same principle the city may impose any reasonable condition upon holding offices within its control." (Italics ours.)

The California courts have made clear the suspension of the public employee's right to advocate the overthrow of the government that he was hired to represent and the suspension of his right to remain silent in relation to this advocacy.

In the case of *Christal* v. *Police Commission*, 33 Cal. App. (2d) 564, 92 P. (2d) 416 petitioners, who were formerly policemen of the City and County of San Francisco, sought by mandamus to be reinstated to their positions. The cause of petitioners' removal was predicated upon the fact that they were subpoened to appear before the grand jury and they refused either to produce their private records or to answer questions before the grand jury concerning their assets and income; and they further refused to testify concerning their acts and conduct. The court stated at page 567:

". . . The main question involved is whether appellants, while holding positions as police officers, could exercise the constitutional privilege of refusing to testify before the grand jury under the circumstances and still insist upon retaining their positions as police officers. . . . We need not further discuss the nature of said privilege here as it is conceded by all that said officers could exercise that privilege in any proceeding. We are concerned here only with the result

of the exercise of such privilege, by those holding the positions of police officers, in an investigation by which it was sought to determine whether such officers had been guilty of criminal activities in connection with their duties as police officers."

The court further stated on page 568:

"We are not unmindful of the constitutional privilege above mentioned which may be exercised by all persons, including police officers, in any proceeding, civil or criminal. (*In re Lemon, supra* (15 Cal. App. (2d) 82); *In re Hoertkorn, supra* (15 Cal. App. (2d) 93)). As we view the situation, when pertinent questions were propounded to appellants before the grand jury, the answers to which questions would tend to incriminate them, they were put to a choice which they voluntarily made. Duty required them to answer. Privilege permitted them to refuse to answer. They chose to exercise the privilege, but the exercise of such privilege was wholly inconsistent with their duty as police officers. They claim that they had a constitutional right to refuse to answer under the circumstances, but it is certain that they had no constitutional right to remain police officers in the face of their clear violation of the duty imposed upon them. (*McAuliffe v. Mayor of New Bedford*, 155 Mass. 216 (29 N. E. 517). We are of the opinion that such a violation of duty would constitute cause for dismissal even in the absence of any specific rule requiring such officers to give testimony before the grand jury, or of any specific

rule relating to 'conduct unbecoming an officer.' That such conduct constituted 'conduct unbecoming an officer,' there can be no doubt."

On page 569 the court stated:

"There is nothing startling in the conception that a public servant's rights to retain his office or employment should depend upon his willingness to forego his constitutional rights and privileges to the extent that the exercise of such rights and privileges may be inconsisent with the performance of the duties of his office or employment. One of the most cherished rights guaranteed by the Constitution is that of freedom of speech, yet no one would maintain that a police officer could fully exercise that right without violating the duties imposed upon him by the acceptance of his employment as a police officer. The right of freedom of speech might be relied upon by a police officer who had disclosed to persons conducting an illegal establishment, information concerning the plan of the police department to conduct a raid upon such establishment, but the furnishing of such information would be inconsistent with and violative of the duties of such police officer. Such conduct would constitute cause for dismissal with or without any specific rule on the particular subject, and in the event of the adoption of a rule providing for dismissal of any officer making such disclosure, the claim that such rule violated any constitutional right of the officers would be clearly untenable."

Public employees do not enjoy the same freedom that they would have as private citizens. *Bell v. District Court of Holyoke*, 314 Mass. 622, 51 N. E. (2d) 328.

4. The right to determine that these implied covenants are qualifications for state positions is a power reserved to the states.

> "No precise limits have been placed upon the police power of a state, and yet it is clear that legislation which simply defines the qualifications of one who attempts to practice medicine is a proper exercise of that power. . . ." *Hawker v. State of New York*, 170 U. S. 189, 42 L. ed. 1002, at 1004.
>
> ". . . (T)hat among the rights reserved to the states is the right of each state to determine the qualifications for office, and the conditions upon which its citizens may exercise their various callings and pursuits within its jurisdiction." (*Cummings v. Missouri*, 71 U. S. 277, 18 L. ed. 356, at 361.

(Please also see *Bridges v. California*, dissent, 314 U. S. 252, 86 L. ed. 192, 213; *Dent v. State of West Virginia*, 129 U. S. 70, 32 L. ed. 623; *Taylor v Beckham*, 178 U. S. 548, 44 L. ed. 1187; *United Public Workers, v. Mitchell*, 330 U. S. 75, 91, L. e .. 754. Government has the right to prescribe qualifications of its employees and attach conditions to their employment. *Friedman v. Schwallenbach*, 159 F. (2d) 22.)

5. Petitioners' case distinguished:

All of petitioners' cases cited in support of petitioners' contention relate to situations wherein the governmen was by penal staute *preventing a private citizen* from speaking, writing or circulating pamphlets, etc.; or *compelling a private citizen* to obtain a permit before doing a lawful act or compelling a private citizen to pledge allegiance to the flag, etc. Illustrative of these cases are:

Hague v. *C. I. O.*, 307 U. S. 496, 83 L. ed. 1423; *Herndon* v. *Lowry*, 301 U. S. 242, 81 L. ed. 1066; *Lovell* v. *Griffin*, 303 U. S. 444, 82 L. ed. 949; *Martin* v. *Struthers*, 319 U. S. 141, 87 L. ed. 1313; *Murdock v. Pennsylvania*, 319 U. S. 105, 87 L. ed. 1292; *Near* v. *Minnesota*, 283 U. S. 697, 75 L. ed. 1357; *Schneider* v. *Irvington*, 308 U. S. 147, 84 L. ed. 155; *Schneiderman* v. *United States*, 320 U. S. 118, 87 L. ed. 1796; *Thomas* v. *Collins*, 323 U. S. 516, 89 L. ed. 430; *Thornhill* v. *Alabama*, 310 U. S. 88, 84 L. ed. 1093; and *West Va. State Bd. of Edu.* v. *Barnett*, 319 U. S. 624, 87 L ed. 1628.

There are three fundamental differences between these cases and the case at bar.

First, there was *no implied contract* containing limitations upon the representatives of the people.

Second, there is in this case *no compulsion* on the private citizen to enter public employment and become subject to the contractual relationship; and

Third, there is *no permanent restraint.*

The relationship between the holder of a position of public trust and the people is purely voluntary on behalf of the office holder. The public employee may, in an instant, restore his suspended constitutional rights by relieving himself of his contractual duties and responsibilities. The case at bar is governed completely by the principles set forth in *Hamilton* v. *University of California*, 293 U. S. 245, 79 L. ed. 343 (approved in *West Virginia State Board of Edu.* v. *Barnett*, 319 U. S. 624, 87 L. ed. 1628.) In that case the University refused to grant an exemption from the requirement that certain students take military training. The students declined to take the prescribed course; and, solely upon that ground, they were suspended from the University. They attacked the validity of the requirement on the ground that it violated the Fourteenth Amendment.

This court declared, at p. 352:

> "California has not drafted or called them to attend the university. They are seeking education offered by the State and at the same time insisting that they be excluded from the prescribed course solely upon grounds of their religious beliefs and conscientious objections to war, preparation for war, and military education. Taken on the basis of the facts alleged in the petition, appellants' contentions amount to no more than an assertion that the due process clause of the Fourteenth Amendment as a safeguard of 'liberty' confers the right to be students in the state university free from

obligation to take military training as one of the conditions of attendance."

And Mr. Justice Cardozo concurring:

"If they elect to resort to an institution for higher education maintained with the state's moneys, then and only then they are commanded to follow courses of instruction believed by the state to be vital to its welfare."

If petitioners could insist on unbridled constitutional freedoms and the right to retain their power as representatives of the people, their positions of trust would be one of right. The holding of a position of public trust is a privilege and not an absolute right. *Canteline* v. *McClellan, Commr. of Police,* 12 N. Y. S. 468, 25 N. E. (2d) 972; *French* v. *Senate,* 146 Cal. 604, 80 Pac. 1031; *Hamilton* v. *University of California,* 293 U. S. 245, 79 L. ed. 343; *West Virginia Board of Edu.* v. *Barnett,* 319 U. S. 624, 87 L. ed. 1628; *Cohen* v. *Wright,* 22 Cal. 293; *Ludolph* v. *Board of Police Commrs.,* 30 Cal. App. (2d) 211, 86 P. (2d) 118; *State* v. *Kirby,* 349 Mo. 988, 163 S.W. (2d) 990.

B. Constitutional Exercise of Police Power.

Assuming no implied covenant to abstain from overthrowing the government by force or violence, and to give information on this subject, and further assuming that the constitutional guarantees of freedom of speech and due process under the First and Fourteenth Amendments apply to petitioners, their constitutional

rights have not been violated because the oath and affidavit program is a proper exercise of the police power.

1. The constitutional guarantee of freedom of speech assured against Federal law in the First Amendment and against State action in the Fourteenth Amendment is not absolute.

> "That the freedom of speech which is secured by the Constitution does not confer an absolute right to speak, without responsibility, whatever one may choose, or an unrestricted and unbridled license giving immunity for every possible use of language and preventing the punishment of those who abuse this freedom; and that a state in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, . . . or endanger the foundations of organized government and threaten its overthrow by unlawful means, is not open to question." *Whitney* v. *California*, 274 U. S. 357, 71 L. ed. 1095, at 1104.
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> "Liberty of speech and of the press is also not an absolute right and the state may punish its abuse." *Near* v. *Minnesota*, 283 U. S. 697, 75 L. ed. 1357, at 1363. (See also *Frohwerk* v. *United States*, 249 U. S. 204, 63 L. ed. 561; *Schenck* v. *United States*, 249 U. S. 47, 63 L. ed. 470).
>
> "The right (freedom of speech) is not an absolute one, and the state in the exercise of its police power may punish the abuse of this freedom." *Stromberg* v. *California*, 283 U. S. 359, 75 L. ed. 1117, at 1123.

"It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language, and prevents the punishment of those who abuse this freedom." *Gitlow* v. *New York*, 268 U. S. 652, 69 L. ed. 1138, at 1145-1146.

(Please also see *DeJonge* v. *Oregon*, 299 U. S. 353, 81 L. ed. 278; *Herndon* v. *Lowry*, 301 U. S. 242, 81 L. ed. 1066; *Cantwell* v. *Connecticut*, 310 U. S. 296, 84 L. ed. 1213; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 86 L. ed. 1031; *Terminiello* v. *Chicago*, 337 U. S. 1 (preliminary print) 93 L. ed. (Advanced Opinions) (No. 15) 865.

2. The State may, in the exercise of its police power, prevent its destruction so long as (a) the state action bears appropriate relation to the safety of the state; (b) it is not vague and indefinite; (c) the clear and present danger rule is satisfied.

a. The state action bears appropriate relation to the safety of the state.

The only action taken by the state is an inquiry. The inquiry is not coupled with any requirement of obedience. It is obvious that inquiry on behalf of the people for the limited purpose of finding if their representatives advocate the violent overthrow of the govern-

ment they are hired to represent is related to the safety of the state.

This inquiry bears relation to the fundamental rights of the people to be assured that their representatives are not breaching their trust. It bears relation to the American doctrine of government by will of the people. It bears relation to the preservation of the form of government lawfully chosen by the people.

The guarantee of freedom of speech does not deprive a state of the primary and essential right to self-preservation. *Gitlow* v. *New York*, 268 U. S. 652, 69 L. ed. 1138.

> "The Constitution was adopted to preserve our government, not to serve as a protecting screen for those who, while claiming its privileges, seek to destroy it." *United States ex rel M. S. D. Pub. Co.* v. *Burleson*, 255 U. S. 407, 414, 65 L. ed. 704, 710.
>
> "The security of the community life may be protected against incitements to acts of violence and the overthrow by force of orderly government." *Near* v. *Minnesota*, 283 U. S. 697, 75 L. ed. 1357, at 1367.
>
> "The right (freedom of speech) is not an absolute one, and the state in the exercise of its police power may punish the abuse of this freedom. There is no question but that the state may thus provide for the punishment of those who indulge in utterances which incite to violence and crime and threaten the overthrow of organized government by unlawful means. There is no constitutional immunity for such conduct abhorrent to our in-

stitutions. *Gitlow* v. *New York*, and *Whitney* v. *California, supra.* We have no reason to doubt the validity of the second and third clauses of the statute as construed by the state court to relate to such incitements to violence." *Stromberg* v. *California*, 283 U. S. 359, 75 L. ed. 1117, at 1123.

"The essential rights of the First Amendment in some instances are subject to the elemental need for order without which the guarantees of civil rights to others would be a mockery." *United Public Workers* v. *Mitchell*, 330 U. S. 75, 91 L. ed. 754, at 770.

"We have said that Congress may regulate the political conduct of Government employees 'within reasonable limits,' even though the regulation trenches to some extent upon unfettered political action. The determination of the extent to which political activities of governmental employees shall be regulated lies primarily with Congress. Courts will interfere only when such regulation passes beyond the general existing conception of governmental power. That conception develops from practice, history, and changing educational, social and economic conditions. The regulation of such activities as Poole carried on has the approval of long practice by the Commission, court decisions upon similar problems and a large body of informed public opinion. Congress and the administrative agencies have authority over the discipline and efficiency of the public service." *United Public Workers* v. *Mitchell*, 330 U. S. 75, 91 L. ed. 754, at 774.

The freedom asserted by the petitioners, who are holders of positions of public trust, that their right to freedom of speech (right to remain silent) has been abridged brings them into collision with the most basic and powerful rights of private citizens to have a say in their government and know that that government is abiding by their will.

> "It is such conflicts which most frequently require intervention of the State to determine where the rights of one end and those of another begin." *West Virginia State Bd. of Edu. v. Barnett*, 319 U. S. 624, 87 L. ed. 1628, at 1633.

b. The oath and affidavit adopted by the Board of Supervisors by order of August 26, 1947, is not vague and indefinite.

The oath and affidavit does not violate the due-process clause of the Fourteenth Amendment because it is vague, indefinite, uncertain, and fails to set forth ascertainable standards as to what is prescribed.

Petitioners contend that the County of Los Angeles and the State of California have not expressed a policy, as what looks like an oath and affidavit is not an oath and affidavit because it is so vague as to be meaningless. Petitioners contend that the due-process clause of the Fourteenth Amendment is thereby violated, and therefore the oath and affidavit must fail because of its conflict with the Constitution. The due-process clause of the Fourteenth Amendment of the Constitution provides:

" . . . ; nor shall any state *deprive* any person of life, liberty, or property, without due process of law. . . . " (Italics ours).

(1) Theory of denial of due process because of vague and indefinite standards applies only where there is an exaction of obedience.

It would appear that there can be no *deprivation* of due-process by application of the doctrine that the oath and affidavit is vague and indefinite unless the oath and affidavit is coupled with an exaction of obedience. If, as in this litigation, there is no exacting of obedience there can be no denial of due-process.

At the outset it must be remembered that nothing is prescribed.

There is *no penal statute* similar to that held a denial of due process as being vague and indefinite in *Thornhill* v. *Alabama,* 310 U. S. 88, 84 L. ed. 1093.

There is *no enjoining of publications* similar to that held a denial of due process as being vague and indefinite in *Near* v. *Minnesota,* 283 U. S. 697, 75 L. ed. 1357.

There is *no licensing system* similar to that held a denial of due process as being vague and indefinite in *Schneider* v. *Irvington,* 308 U. S. 147, 84 L. ed. 155, and *Lovell* v. *Griffin,* 303 U. S. 444, 82 L. ed. 949.

Cases holding penal statutes unconstitutional as violative of due-process clause in that they were vague and indefinite are not a proper guide in this case.

"The standard of certainty in statutes punishing for offenses is higher than in those depending primarily upon civil sanction for enforcement." *Winters v. New York*, 333 U. S. 507, 92 L. ed. 840, at 849.

This rule was likewise made clear in the case of *Barsky v. United States*, 167 Fed. (2d) 241, wherein the Court said at page 247:

"The next phase of the problem is whether the power in inquiry was validly delegated by the Congress to the Committee.

"*It is said that the Resolution is too vague to be valid.* Perhaps the one phrase 'un-American propaganda activities,' taken alone as it appears in subclause (i) of the Resolution, would be subject to that condemnation. But the clause, above-quoted, 'subversive and un-American propaganda that . . . attacks the principle of the form of government as guaranteed by our Constitution,' which is subclause (ii), is definite enough. It conveys a clear meaning and that is all that is required. The principles which underlie the form of the existing government in this country are well-enough defined in basic documents preceding the Constitution, are obvious in the undebated unanimity which prevailed on many basic propositions in the Convention of 1787, were stated during the consideration of the adoption of the Constitution, are stated in countless scholarly works upon principles of government, and, indeed, are taught even to high school students in our schools. . . . Appellants argue that because the Resolution is

not on its face directly and exclusively concerned with such activities as may be constitutionally restricted, it is unconstitutional. Cases are cited to the point, but they are all criminal cases and dealt with the requirements in penal statutes. *There is a difference between the particularity required in the specification of a criminal act and that required in the authorization of an investigation, as a comparative examination of the cases cited by appellants and the cases dealing with investigations, above mentioned, readily shows.*" (Italics ours.)

As the Board order of August 26, 1947 is not a statute, as it contains no penalty, as it enjoins no publication, and as its does not constitute a licensing system, it would clearly appear that it does not fall within the doctrine established by the line of cases of which *United States* v. *L. Cohen Grocery Co.*, 255 U. S. 81, 65 L. ed. 516, is typical. All of these statutes were penal statutes. All of these statutes *exacted an obedience* to a rule or standard which was so vague and indefinite as really to be no rule or standard at all. There is no exaction of obedience that petitioners execute the oath and affidavit as there is no penalty under the Board of Supervisors' order of August 26, 1947, for failure of the petitioners to execute the oath and affidavit.

(2) Assuming there is a compulsion on petitioners to answer, the language of the oath and affidavit has a well-recognized meaning.

The Supreme Court of the United States has declared that phrases not as precise as "the advocacy of overthrow of the government by force or violence" are clear and have precise, definite meaning. Such a phrase is not " 'so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.' Connally v. General Constr. Co. 269 U. S. 385, 391, 70 L. ed. 322, 328. . . ." *Whitney* v. *California,* 274 U. S. 357, 71 L. ed. 1095, at 1102.

In Whitney v. *California,* supra, the section being challenged read, in part:

> "Section 1. The term 'criminal syndicalism' as used in this act is hereby defined as (to include) any doctrine or precept advocating . . . force and violence . . . as a means of accomplishing . . . any political change.
>
> "Sec. 2. Any person who: . . . (4) Organizes or assists in organizing, or is or knowingly becomes a member of, any organization, society, group or assemblage of persons organized or assembled to advocate, teach or aid and abet criminal syndicalism. . .
>
> "Is guilty of a felony and punishable by imprisonment." *Whitney* v. *California,* 274 U. S. 357, 71 L. ed. 1095 at 1099.

The Supreme Court declared, at p. 1102:

> "It is clear that the Syndicalism Act is not repugnant to the due process clause by reason of vagueness and uncertainty of definition. It has no substantial resemblance to the statutes held

void for uncertainty under the 14th and 5th Amendments in International Harvester Co. v. Kentucky, 234 U. S. 216, 221, 58 L. ed. 1284, 1287, 34 Sup. Ct. Rep. 853; and United States v. L. Cohen Grocery Co. 255 U. S. 81, 89, 65 L. ed. 516, 520, 14 A. L. R. 1045, 41 Sup. Ct. Rep. 298, because not fixing an ascertainable standard of guilt. The language of Sec. 2, subd. 4, of the act under which the plaintiff in error was convicted is clear; the definition of 'criminal syndicalism' specific.

"The act, plainly, meets the essential requirement of due process that a penal statute be 'sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties,' and be couched in terms that are not 'so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.'"

Obviously, if this court was of the opinion that criminal syndicalism has been adequately defined by such phrases as ". . . . advocating . . . force and violence . . . as a means of accomplishing . . . any political change", then these words in themselves have a sufficiently definite meaning. In the instant case the "advocacy of the force or violence" is not applied to *any* "political change" but *only* to the "specific overthrow of government" by force or violence.

In *Gitlow* v. *New York*, 268 U. S. 652, 69 L. ed. 1138, the Supreme Court of the United States had before it

Section 160 of the New York Penal Laws. Section 160 defined "criminal anarchy" to include:

> ". . . the doctrine that organized government should be overthrown by force or violence. . . ." 69 L. ed. at 1140.

The trial court charged the jury that a mere statement that unlawful acts might accomplish the overthrow of the government would be insufficient unless there was an advocacy of employing such unlawful acts for the purpose of overthrowing government. In discussing the challenging of the word "advocacy", this Court declared:

> "It does not restrain the advocacy of changes in the form of government by constitutional and lawful means. What it prohibits is language advocating the overthrow of organized government by unlawful means. These words imply urging to action. Advocacy is defined in the Century Dictionary as: '1. The act of pleading for, supporting, or recommending; active espousal.' It is not the abstract 'doctrine' of overthrowing organized government by unlawful means which is denounced by the statute, but the advocacy of action for the accomplishment of that purpose." 69 L. ed. 1145.

In these two cases, we have a clear declaration by the Supreme Court of the United States that the phrase "advocacy of the overthrow of government by force or violence" has a clear, precise, and well-recognized meaning.

(3) The interpretation of the Board order by the highest court of the State reviewing the matter should be given consideration.

Where the alleged vagueness of a statute has been cured by an opinion of the State court, the Supreme Court of the United States has affirmed a conviction under the stated limitation of meaning.

> "Where the alleged vagueness of a state statute has been cured by an opinion of the state court, confining a statute punishing the circulation of publications 'having a tendency to encourage or incite the commission of any crime' to 'encouraging an actual breach of law,' this Court affirmed a conviction under the stated limitation of meaning. The accused publication was read as advocating the commission of the crime of indecent exposure. *Fox* v. *Washington*, 236 U. S. 273, 277, 59 L. ed. 573, 575, 35 S. Ct. 383." *Winters* v. *New York*, 333 U. S. 507, 92 L. ed. 840, at 847.
>
> "What the statutes of a State mean, the extent to which any provision may be limited by other Acts or by other parts of the same Act, are questions on which the highest court of the State has the final word. The right to speak this word is one which State courts should jealously maintain and which we should scrupulously observe." *Musser* v. *Utah*, 333 U. S. 95, 98, 92 L. ed. 562, 565.

The State court's conclusion as to the scope of the Board order and oath and affidavit is binding upon the Supreme Court of the United States. *Kovacs* v. *Cooper*, 93 L. ed. (Advanced Opinions) 379, 385.

In this case we have an interpretation of the state court tying down the application of the order of the Board of Supervisors of August 26, 1947 to the determination of advocacy of overthrow of the government by force and violence. This state court decision is fortified by the fact that no employee who has executed the oath and affidavit has been in any way penalized or discriminated against because of such information, which clearly indicates the intent of the County elective officials to hold the application of the order to personal advocacy of overthrow of government by force or violence.

Here, the Board of Supervisors by action adopted an oath and affidavit. The oath and affidavit is narrowly drawn to cover the precise situation wherein information is sought, i.e.: the advocacy of the overthrow of the government by force or violence by one employed to represent that government. *Martin* v. *Struthers*, 319 U. S. 141, 87 L. ed. 1313. Advocacy of overthrow of government by force or violence has a clear and definite meaning. *Gitlow* v. *New York*, 268 U. S. 652, 69 L. ed. 1138; *Whitney* v. *California*, 274 U. S. 357, 71 L. ed. 1095; *Communist Party* v. *Peek*, 20 Cal. (2d) 536.

There is nothing indefinite about Paragraph "D" as the organizations referred to are actually specified by name. As pointed out by Mr. Justice Frankfurter in his dissent in the case of *Winters* v. *New York*, 333

U. S. 507, 92 L. ed. 840, at 859, the pinnacle of definiteness is designation by name:

> "But we are told that New York has not expressed a policy, that what looks like a law is not a law because it is so vague as to be meaningless. Suppose then that the New York legislature now wishes to meet the objection of the Court. What standard of definiteness does the Court furnish the New York legislature in finding indefiniteness in the present law? Should the New York legislature enumerate by name the publications which in its judgment are 'inciting violent and depraved crimes'?"

It must also be remembered that power of congress over the conduct of officers and employees of the government no more depends upon authority over the ultimate purposes of that conduct than the powers to punish a use of the mails for a fraudulent purpose is limited by its inability to punish the intended fraud. *United States* v. *Wurzbach*, 280 U. S. 396, 74 L. ed. 508.

c. The oath and affidavit meets the clear and present danger test, if that is applicable.

Respondents offer four answers to the claimed effect of the clear and present danger rule in this case:

(1) The clear and present danger rule applies to state *action*, not to state *inquiry*.

It is obvious that if the state is justified in limiting freedom of speech if there exists a clear and present danger, then as a corollary, the state has the power to

make an inquiry to see whether or not the clear and present danger exists.

"'. . . If the state were prevented from inquiry and compelled to wait until the apprehended danger became certain then its right to protect itself would come into being simultaneously with the overthrow of the government, when there would be neither prosecuting officers or courts for the enforcement of the law.'" *Gitlow v. New York*, 268 U. S. 652, 69 L. ed. 1138, at 1147 (quoting from *People v. Lloyd*, 304 Ill. 23, at 35 (136 N. E. 505).)

"This existing machinery of government has power to inquire into potential threats to itself, not alone for the selfish reason of self-protection, but for the basic reason that having been established by the people as an instrumentality for the protection of the rights of people, it has an obligation to its creators to preserve itself. Moreover, the process whereby a change in the form of government can be accomplished has been prescribed by the people in the same document which records the establishment of the presently existing machinery, and that process requires the Congress to initiate proposed amendments. We think that inquiry into threats to the existing form of government by extra-constitutional processes of change is a power of Congress under its prime obligation to protect for the people that machinery of which it is a part, and inquiry into the desirability *vel non* of other forms of government is a power of Congress under its mandate to initiate amendments if such become advisable. . . .

"The Congressional power of inquiry is not unrestricted. One obvious limitation upon this particular sort of inquiry is that some reasonable cause for concern must appear. We are referred to the 'clear and present danger' rule expressed by Mr. Justice Holmes in Schenck v. United States and extending through the line of cases cited and discussed in Bridges v. State of California. But all those cases dealt with statutes which actually imposed a restriction upon speech or publication. In our view, it would be sheer folly as a matter of governmental policy for an existing government to refrain from inquiry into potential threats to its existence or security until danger was clear and present. And for the judicial branch of government to hold the legislative branch to be without power to make such inquiry until the danger is clear and present, would be absurd. How, except upon inquiry, would the Congress know whether the danger is clear and present? There is a vast difference between the necessities for inquiry and the necessities for action." *Barsky* v. *United States*, 167 F. 2d 241, at 246.

(2) As holders of positions of public trust are possessed of a tremendous power over the private citizenry, then if the public servant advocates forceful overthrow of the government chosen by the people whom the public servant is hired to represent, an inherent clear and present danger exists.

The legislature has power to exclude from office those individuals and groups advocating the overthrow of the government by unlawful means.

"Such groups constitute an immediate threat to the functioning of our institutions. . . (Such groups) create a clear danger to the continued existence of the institutions under which our constitutional form of government functions." *Communist Party* v. *Peek*, 20 Cal. (2d) 536, at 551.

"It cannot be said that the state is acting arbitrarily or unreasonably when, in the exercise of its judgment as to the measures necessary to protect the public peace and safety, it seeks to extinguish the spark without waiting until it has enkindled the flame or blazed into the conflagration. It cannot reasonably be required to defer the adoption of measures for its own peace and safety until the revolutionary utterances lead to actual disturbances of the public peace or imminent and immediate danger of its own destruction; but it may, in the exercise of its judgment, suppress the threatened danger in its incipiency. In People v. Lloyd, supra, (304 Ill. 23) p. 35 (136 N. E. 505) it was aptly said: 'Manifestly, the legislature has authority to forbid the advocacy of a doctrine designed and intended to overthrow the government without waiting until there is a present and imminent danger of the success of the plan advocated. If the state were compelled to wait until the apprehended danger became certain, then its right to protect itself would come into being simultaneously with the overthrow of the government, when there would be neither prosecuting officers nor courts for the enforcement of the law.'" *Gitlow* v. *New York*, 268 U. S. 652, 69 L. ed. 1138, at 1147.

Both the high court of California and this Court have recognized that certain dangers are inherently clear and present. The advocacy by a public servant of forceful and violent overthrow of the government he is hired to represent is certainly an inherent clear and present danger.

(3) Here the state has determined that advocacy of overthrow of the government by force or violence by holders of positions of public trust constitutes a clear and present danger of such substantive evil that it should be prevented by exercise of the police power.

> "By enacting the present statute the state has determined, through its legislative body, that utterances advocating the overthrow of organized government by force, violence, and unlawful means, are so inimical to the general welfare, and involve such danger of substantive evil, that they may be penalized in the exercise of its police power. That determination must be given great weight. Every presumption is to be indulged in favor of the validity of the statute. *Mugler v. Kansas,* 123 U. S. 623, 661, 31 L. ed. 205, 210, 8 Sup. Ct. Rep. 273; *Gitlow v. New York,* 268 U. S. 652, 69 L. ed. 1138, at 1146.
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> "While the doctrine of the *Schenck* case has afforded practical guidance in a great variety of cases in which the scope of constitutional protection of freedom of expression was in issue (*Bridges v. State of California,* 314 U. S. 252, 63 S. Ct. 190, 193, 86 L. ed. 192), yet it is by no means of universal application. *Gitlow v. People of State*

of New York, 268 U. S. 652, 45 S. Ct. 625, 69 L. ed. 1138, definitely determines that the *Schenck* case doctrine is not applicable in situations where the legislative body has, by statute, determined that 'utterances of a certain kind involve such danger of substantive evil that they may be punished' 268 U. S. at page 670, 45 S. Ct. at page 631, 69 L. ed. 1138. *The distinction between such cases and those to which the Schenck case doctrine is applicable is clearly stated in the Gitlow opinion at pages 670 and 671 of 268 U. S., 45 S. Ct. at page 631, 69 L. ed. 1138.* This distinction has not been departed from nor weakened by any subsequent holding of the Supreme Court but, to the contrary, has been recognized and applied. *Cantwell v. State of Connecticut,* 310 U. S. 296, 307, 308, 60 S. Ct. 900, 84 L. ed. 1213, 128 A. L. R. 1352; *Herndon v. Lowry,* 301 U. S. 242, 256-258, 57 S. Ct. 732, 81 L. ed. 1066; *Stromberg v. People of State of California,* 283 U. S. 359, 368, 369, 51 S. Ct. 532, 75 L. ed. 1117, 73 A. L. R. 1484; *Whitney v. People of State of California,* 274 U. S. 357, 371, 372, 47 S. Ct. 641, 71 L. ed. 1095.

"The problem here is whether this Act falls within the rule of the *Gitlow* case. We think it is within the *Gitlow* case." *Dunne v. United States,* 138 F. 2d 137, at 145 (C. C. A. 8th 1943, certiorari denied 320 U. S. 790).

The legislative declaration of the Legislature of he State of California and the Board of Supervisors f the County of Los Angeles on this matter of major mport is entitled to great weight. *Whitney v. Cali-*

fornia, 274 U. S. 357, 71 L. ed. 1095 and *Gitlow v. New York,* 268 U. S. 652, 69 L. ed. 1138.

The oath and affidavit adopted by the Board of Supervisors comes before this court "encased in armor wrought by prior legislative deliberation." For here, the Legislature of California and the Board of Supervisors of the County of Los Angeles "appraised a particular kind of situation and found a specific danger sufficiently imminent to justify a restriction on a particular kind of utterance." *Bridges v. California,* 314 U. S. 252, 86 L. ed. 192, at 202. (Please also see *Cantwell v. Connecticut,* 310 U. S. 296, 84 L. ed. 1213, and *Herndon v. Lowry,* 301 U. S. 242, 81 L. ed. 1066.)

The oath and affidavit is "narrowly drawn to cover the precise situation that calls for remedial action." *Martin v. Struthers,* 319 U. S. 141, 87 L. ed. 1313, at 1321.

The Board of Supervisors of the County of Los Angeles by adopting the oath and affidavit have declared that advocacy of violent overthrow of the government by holders of positions of public trust involves such a danger to the public peace and the security of the State and the County that inquiry should be made to determine whether such advocacy by public employees of the County exists. *Whitney v. California,* 274 U. S. 357, 71 L. ed. 1095.

Therefore, it is not incumbent upon this court to find "as an original question" that such advocacy created "'such likelihood of bringing about the sub-

stantial evil as to deprive (them) of the constitutional protection.' *Gitlow v. New York,* 268 U. S. 652, 69 L. ed. 1138, 1148." *Bridges v. California,* 314 U. S. 252, 86 L. ed. 192, at 202.

The California Legislature and the Board of Supervisors of the County of Los Angeles are reasonably exercising the police power as "it is a question of proximity and degree." *Schenck v. United States,* 249 U. S. 47, 63 L. ed. 470, at 474.

(4) The "clear and present danger" relates to the evil of advocacy of violent overthrow of the government by an employee thereof, (as) and such advocacy is one of the substantive evils which the people have the right to prevent.

The test does not envisage only dangers which may imperil the security of government, although the facts involved in the principle of the oath and affidavit could meet even such a standard. The principle which was first stated by Mr. Justice Holmes in *Schenck v. United States,* 249 U. S. 47, 52, 63 L. ed. 470, 473, is that:

> "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils *that Congress has a right to prevent.*" (Italics ours.)

In the case of *Pennekamp v. Florida,* 328 U. S. 331, 335, 90 L. ed. 1295, 1297, the court made it clear that:

> "The danger to be guarded against is the 'substantive evil' sought to be prevented,"

and "substantive evil" in this context clearly did not refer merely to safety of the government.

In *West Va. Board of Edu. v. Barnett*, 319 U. S. 624, 639, 87 L. ed. 1628, 1638, the court stated that the freedoms granted by the First Amendment "are susceptible of restriction only to prevent grave and immediate danger *to interests which the state may lawfully protect.*" (Italics ours).

The Court has rejected the argument that the clear and present danger test prevents prohibiting the distribution of religious literature by Children (*Prince v. Commonwealth of Massachusetts*, 321 U. S. 158, 167, 88 L. ed. 645, 653), or penalizing the use of language likely to cause a public altercation (*Chaplinsky v. New Hampshire*, 315 U. S. 568, 86 L. ed. 1031). And the assumption underlying the *Bridges* and *Pennekamp* decisions is that expressions which would in fact constitute a serious danger to the fair administration of justice could be punished. Although these cases involved important substantive evils, none of them were concerned with anything menacing the security of government.

The substantive evil here is the danger of breach of public trust which must result if the holder of a position of public trust (representing the people in their lawfully selected form of government) advocates the destruction of that government by force and violence.

This evil the elective representatives of the people have a right to prevent. A further substantive evil is the danger of holders of positions of public trust failing to advise the people that they are breaching the trust. This evil may likewise unquestionably be prevented by the elective representatives of the people.

The cases suggest that the evils which justify a limitation upon First Amendment rights must be "substantial" or "serious", not "a minor matter of public inconvenience or annoyance," (*Bridges v. California*, 314 U. S. 252, 262, 263, 86 L. ed. 192) such as the littering of the streets with handbills (*Schneider v. Town of Irvington*, 308 U. S. 147, 84 L. ed. 155), but certainly the evil at which the oath and affidavit strikes is substantial and serious. Use of positions of public trust for the purpose of destroying the trust by force and violence and destroying the form og government which guarantees government by will of the people is an example of one of the most substantial and serious evils ever to be reviewed by this court.

C. Affirmative Constitutional Grant of Power.

There is an affirmative grant of power to the people in Article VI, Clause 3, of the United States Constitution to require oaths of holders of positions of public trust.

The framers of the Constitution of the United States and the first ten Amendments thereto, were well aware of the fact that government, as a body politic

and corporate, is a lifeless and powerless thing which has never in the history of mankind deprived people of any rights whatsoever. The deprivation of the rights of the private citizens comes about by and through the office holder. It was from the yoke of actions by tyrannical office holders that the framers of the Constitution and the first ten Amendments were attempting to forever extract themselves. The drafters of these documents well knew that the guarantees of the Bill of Rights in the hands of public officers and employees who would conduct themselves as masters and not as servants would be but dead words upon parchment.

The guarantee contained in the Bill of Rights of the right to a trial by jury (Seventh Amendment) is certainly mere writing upon parchment to the wife of a man who lies dead upon the street because of the action of a trigger-happy marshal who odvocated that the just punishment for all suspected felons was extensive use of his trusty .45. If this marshal can be discharged because he failed to comply with constitutional requirements, and if we in truth have a government subject to the will of the people who do not wish their constitutional rights to be thus abridged, then certainly these very same people can require assurance of this marshal before he has the opportunity to exercise the power of his office that he will not conduct himself in such a manner as to deprive the private citizenry of their constitutional rights.

We are at the crossroads of the problem which Abraham Lincoln cast in memorial dilemma:

> "Must a government of necessity be too strong for the liberties of its people, or too weak to maintain its existence?"

This court has declared that government is too strong if it limits free speech of its private citizens, absent clear and present danger. *West Virginia State Board of Education v. Barnett*, 319 U. S. 624, 87 L. ed. 1628.

However, is government too strong because it asks assurances from the agents of the people that they will not advocate the overthrow, by force or violence, of the government lawfully selected by the people? Obviously not. The constitutional framers were aware that a prevention of an infringement of free speech by law of Congress and action of state could not protect them from arbitrary abuse of public officers. The First Amendment protects the private citizens against *Federal laws*. The Fourteenth Amendment carries the protection of the First to *State action*. In neither the First Amendment nor the Fourteenth Amendment is a private citizen protected against action by *another individual*.

As the private citizen has no protection (through the operation of the First Amendment and the Fourteenth Amendment) against oppressive action by an office holder, not taken under color of governmental authority, then other safeguards for the people against

oppressive actions of office holders had to be written into the Constitution. (Reference: "New Threats to American Freedoms", page 25, Robert E. Cushman.)

The American form of government requires the government to be responsible to the will of the people. *Stromberg v. California,* 283 U. S. 359, 75 L. ed. 1117, and *Terminiello v. Chicago,* 337 U. S. 1 (Preliminary print) 93 L. ed. Advanced Opinions (No. 15) 865. We must "secure freedom from oppressive administration. . . ." *Thornhill v. Alabama,* 310 U. S. 88, 84 L. ed. 1093, at 1102:

> "Those who have gone before us have admonished us 'that in a free representative government nothing is more fundamental than the right of the people through their appointed servants to govern themselves in accordance with their own will.'" *Bridges v. California,* 314 U. S. 252, 86 L. ed. 192, at 213.

Therefore, the Constitution in order to completely round out the guarantee of freedom from an arbitrary and oppressive action by public officials, specifically granted affirmative power to the people to require from the holders of positions of public trust a solemn commitment that such officers and employees would not advocate the violent overthrow of the government lawfully chosen by the people. So that there would be no misapprehension on this subject, the Constitutional framers provided affirmative internal evidence of this right in the Constitution itself. In the Sixth Article of the Constitution, clause 3 thereof, they provided:

"The senators and representatives before mentioned, and the members of the several state legislatures and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States."

So great at times has been the emphasis on purely negative characteristics of the Constitution, on prohibitions of the exercise of power rather than on the giving of power, as to create the false impression that the primary function of the Constitution is negative rather than positive. Important as are the negative functions, their exercise would have no point were there no positive functions on which to exercise restraint. (Reference: "The Growth of Constitutional Power in the United States," page 23, by Carl Brent Swisher.) By granting affirmative power in the people to require, from both federal and state officers, an oath to support the Constitution, the people are given a direct authority over their representatives and a solemn guarantee of their liberty. The office holders must solemnly pledge that by supporting the Constitution they will not advocate the overthrow of the government by force or violence because in supporting the Constitution they must pledge and agree that there is only one manner of bringing about a change, which single method is provided in the Constitution.

The constitutional framers in requiring oaths from public officers did not specify the language of the oath but established the pattern for the minimum oath and the maximum oath. Article VI establishes the minimum requirement that the holders of positions of public trust must be bound to support the Constitution. It then declares that the maximum requirement may not include a religious test. Between the mandatory minimum requirement that the Federal and State officers execute an oath to support the Constitution and the maximum requirement that such oath may not require a religious test, lies the field of discretion of the people to obtain detailed assurance from their representatives that they give proof that they will support the Constitution.

Government by will of the people and not by oppressive office holders is made possible by three main Constitutional provisions:

First, the First Amendment *prevents Congress from passing any law* depriving the private citizenry of any rights therein specified.

Second, the Fourteenth Amendment makes the guarantee of the First Amendment secure from *state* action.

Third, the Sixth Article *grants affirmative power in the people to require oaths from federal and state office holders* pledging their support of the Constitution, which a fortori includes agreement to abide by the form of change established in the Constitution and further agreement that the

office holders will not advocate change by force or violence.

Petitioners cannot contend that their right to remain silent is violated by being asked to execute an oath and affidavit. This requirement stems from Article VI, Clause 3, of the United States Constitution. As the First Amendment prevents abridgment by law of Congress and the Fourteenth Amendment prevents abridgment by State action, obviously neither refer to the United States Constitutional requirement in Article VI, Clause 3. Article VI, Clause 3, of the United States Constitution is neither a law of Congress nor State action.

VII.

REITERATION OF PRIOR CONTENTIONS IN BRIEF IN OPPOSITION TO PETITION FOR WRITS OF CERTIORARI.

Respondents reiterate the contentions made in their Brief in Opposition to Petiton for Writs of Certiorari. Respondents contend that this court should not have taken jurisdiction on certiorari as the decision of the State court is supported by adequate state grounds.

Petitioners are before this court seeking a review of their rights arising under an employment contract and not a review of their constitutional rights as private citizens. It is clear that petitioners' rights stem from a contractual status. These rights have been de-

clared by the state court and no federal question in relation to the First and Fourteenth Amendments is in issue.

Petitioners are asking this court to determine that they cannot be penalized for information given in the oath and affidavit. The Los Angeles County Charter provides a specific administrative remedy to review penalties of County employees*, and petitioners have not exhausted these administrative remedies. The issue of penalty for refusal to execute the oath and affidavit is not present in this litigation.

Furthermore, the state court found that the issue of penalty was premature, as none existed in the Board of Supervisors' order of August 26, 1947. The state court also found that even though it be assumed that the committee respondents were threatening the petitioners, as alleged in paragraphs VII through X of petitioners' amended complaints (P. 5, 6, 7; S. 4, 5, 6), that said respondents had no legal power to carry out said threats. (P. 58, 59; S. 47).

It will be noted that only the committee respondents are alleged to have made the threats. No threats are attributed to the Board of Supervisors or the department heads as the appointing power.

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*Los Angeles County Charter Sec. 34, subdiv. 13.

VIII.

NO JUSTICIABLE CASE OR CONTROVERSY IS PRESENTED

The following is urged in supplement to the points raised in Respondents' Brief in Opposition to Petition for Writs of Certiorari.

Summary

A determination of the constitutional issues raised by the petitioners in this case is without the well-defined boundaries of judicial authority. In observance of the doctrine of separation of power between the lawmaking branches of government and the judiciary, this Court has repeatedly held that the mere naked enactment of a statute without effort to enforce it presents no judicial case or controversy. If the Board of Supervisors' order pleaded provides for no penalty for failure to comply, then there can be no enforcement. Any assumption that further orders will be made by the Board of Supervisors and the nature of the penalty presumed in such orders are all hypothetical factors not present in this litigation.

When the surplusage in petitioners' amended complaint is disregarded, the pleadings allege that:

1. The Board of Supervisors did on August 26, 1947, adopt an oath and affidavit, as set forth in Exhibit "A" to petitioners' amended complaints (P. 16; S. 15).

2. Petitioners are County employees and within the scope of said Board order. (P. 2; S. 1).

The Board of Supervisors did adopt a policy of inquiry and an oath and affidavit to be submitted to petitioners. Petitioners are objecting that they must elect either to sign or not to sign; that the mere submission of the oath and affidavit to them constitutes a violation of their constitutional rights, although if they refuse to sign or do sign no penalty is prescribed.

These are the sole and exclusive facts before this Court. The allegations embraced in paragraphs VII to X, inclusive, of the amended complaints, are figments of the imagination and constitute solely and entirely the conjecture, surmise and apprehension of petitioners. Respondents submit that the amended complaints, under fundamental rules of law, demonstrate the fictitious nature of the threats made, and as a result, paragraphs VII to X, inclusive, are to be ignored. This leaves only the status of petitioners and the naked adoption of the Board's order of August 26, 1947, unimplemented by any action in furtherance thereof. To exercise judicial power on such a record is to exercise a legislative veto.

Argument

Jurisdiction of this Honorable Court is defined by Article III of the Constitution of the United States which limits the Court to the exercise of judicial power only in connection with a case or controversy.

A. What Is "Case or Controversy"?

By the terms "cases" and "controversies" used in the judicial article of the Constitution defining the limits of the judicial power of the United States "are intended the claims or contentions of litigants brought before the courts for adjudication by regular proceedings established for the protection or enforcement of rights or the prevention, redress, or punishment of wrongs. Whenever the claim or contention of a party takes such a form that the judicial power is capable of acting upon it, then it has become a case or controversy." (*Smith v. Adams,* 130 U. S. 167, 173, 32 L. Ed. 895, 897.)

In harmony with this rule the Court has stated on other occasions that "there be an actual controversy arising between adverse litigants" (*Muskrat v. United States,* 219 U. S. 346, 361, 55 L. Ed. 246, 252); an "actual controversy, involving real and substantial rights, between the parties to the record," (*Little v. Bowers,* 134 U. S. 547, 557, 33 L. Ed. 1016, 1020); calling for a determination of "rights of persons or of property, which are actually controverted in the par-

ticular case" (*California v. San Pablo & T. R. Co.*, 149 U. S. 308, 314, 37 L. Ed. 747, 749); a "real, earnest and vital controversy between individuals" (*Chicago & Grand Trunk Ry. Co. v. Wellman*, 143 U. S. 339, 345, 36 L. Ed. 176, 179); "an actual controversy and adverse interests" (*Lord v. Veazie*, 8 How. 251, 255, 12 L. Ed. 1067, 1069); "the essentials of an adversary proceeding, involving a real, not a hypothetical, controversy" (*Nashville, C. & St. L. Ry. Co. v. Wallace*, 288 U. S. 249, 264, 77 L. Ed. 730, 736).

Conversely, this Court has held that its judicial power does not extend to determination of abstract questions, hypothetical cases or questions, the rendition of advisory opinions or the consideration of ill-defined controversies over constitutional issues. (*Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 324, 80 L. ed. 688, 699; *United Public Workers v. Mitchell*, 330 U. S. 75, 88, 91 L. ed. 754, 766.)

In the *United Public Workers* case, *supra*, the Court specifically stated that the requirements of a case or controversy applied with equal force to declaratory judgments.

B. Rule When Federal Statute Involved.

Where claim is made that acts of Congress are unconstitutional, this Court has always made full inquiry to assure itself that a case or controversy exists.

In the case of *Massachusetts v. Mellon*, 262 U. S. 447, 488, 67 L. Ed. 1078, 1085, the Court said at page 412:

"The functions of government under our system are apportioned. To the legislative department has been committed the duty of making laws; to the executive the duty of executing them; and to the judiciary the duty of interpreting and applying them in cases properly brought before the courts. The general rule is that neither department may invade the province of the other and neither may control, direct or restrain the action of the other. . . . We have no power *per se* to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the jurisdiction for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. It amounts to little more than the negative power to disregard an unconstitutional enactment, which otherwise would stand in the way of the enforcement of a legal right. The party who invokes the power must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally. If a case for preventive relief be presented the court enjoins, in effect, not the execution of the statute, but the

acts of the official, the statute notwithstanding. Here the parties plaintiff have no such case. Looking through forms of words to the substance of their complaint, it is merely that officials of the executive department of the government are executing and will execute an act of Congress asserted to be unconstitutional; and this we are asked to prevent. To do so would be not to decide a judicial controversy, but to assume a position of authority over the governmental acts of another and co-equal department, an authority which plainly we do not possess."

More recently, in the case of *United Public Workers v. Mitchell*, 330 U. S. 75, 90, 91 L. Ed. 754, 767, this Court said:

"The Constitution allots the nation's judicial power to the federal courts. Unless these courts respect the limits of that unique authority, they intrude upon powers vested in the legislative or executive branches. Judicial adherence to the doctrine of the separation of powers preserves the courts for the decision of issues, between litigants, capable of effective determination. Judicial exposition upon political proposals is permissible only when necessary to decide definite issues between litigants. When the courts act continually within these constitutionally imposed boundaries of their power, their ability to perform their function as a balance for the people's protection against abuse of power by other branches of government remains unimpaired. Should the courts seek to expand their power so as to bring under their jurisdiction

ill-defined controversies over constitutional issues, they become the organ of political theories. Such abuse of judicial power would properly meet rebuke and restriction from other branches. By these mutual checks and balances by and between the branches of government, democracy undertakes to preserve the liberties of the people from excessive concentrations of authority."

C. Rule When State Statute Involved

The rule is no different when the alleged conflict is between a state statute and a provision of the Federal Constitutional.

Thus, in the case of *Chicago and G. T. R. Co. v. Wellman*, 143 U. S. 339, 345, 36 L. Ed. 176, 179, the Court said:

> "The theory upon which, apparently, this suit was brought is that parties have an appeal from the Legislature to the courts; and that the latter are given an immediate and general supervision of the constitutionality of the acts of the former. Such is not true. Whenever, in pursuance of an honest and actual antagonistic assertion of rights by one individual against another, there is presented a question involving the validity of any Act of any Legislature, state or federal, and the decision necessarily rests on the competency of the Legislature to so enact, the court must, in the exercise of its solemn duties, determine whether the Act be constitutional or not; but such an exercise of power is the ultimate and supreme function of

courts. It is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the Legislature could transfer to the courts an inquiry as to the constitutionality of the legislative Act."

Because the jurisdiction of the federal judiciary is limited to actual cases and controversies and does not include the power to hear and decide mere differences of opinion and render advisory opinions upon hypothetical facts, the court has been ever alert to detect the presence of such feigned controversies.

D. Feigned Controversies Are Not Justiciable.

In *Little v. Bowers*, 134 U. S. 547, 558, 33 L. Ed. 1016, 1021, the Court said:

"The fact that there is no controversy between parties to the record, ought, in the interest of pure administration of justice, to be allowed to be shown at any time before the decision of the case. Any other rule would put it in the power of designing persons to bring up a feigned issue in order to obtain a decision of this court upon a question involving the rights of others who have had no opportunity to be heard."

A stronger statement of the rule is found in *Lord v. Veazie*, 8 How. 251, 255, 12 L. Ed. 1067, 1069, where the Court said:

"And any attempt, by a mere colorable dispute, to obtain the opinion of the court upon a question of law which a party desires to know for his own interest or his own purposes, when there is no real and substantial controversy between those who appear as adverse parties to the suit, is an abuse which courts of justice have always reprehended, and treated as a punishable contempt of court."

Existence of Board of Supervisors' order without compulsion on petitioners to comply presents no controversy. In accordance with the Court's duty and responsibility to exercise judicial power only, it is established by numerous decisions of this Court that the bare existence of a statute which might affect an individual in the absence of any actual, as distinguished from potential, act to apply or enforce the statute, presents no justiciable case or controversy.

In *Cherokee Nation v. Georgia*, 5 Pet. 1, 75, 8. L. Ed. 25, 52, this Court said:

"This court can have no right to pronounce an abstract opinion upon the constitutionality of a state law. Such law must be brought into actual or threatened operation, upon rights properly falling under judicial cognizance, or a remedy is not to be had here."

In *Massachusetts v. Mellon*, 262 U. S. 447, 483, 67 Ed. 1078, 1083, the Court said:

"In the last analysis, the complaint of the plaintiff state is brought to the naked contention

that Congress has usurped the reserved powers of the several states by the mere enactment of the statute though nothing has been done and nothing is to be done without their consent; and it is plain that that question as it is thus presented, is political, and not judicial, in character, and therefore is not a matter which admits of the exercise of the judicial power."

In *New Jersey v. Sargent*, 269 U. S. 328, 339, 70 L. Ed. 289, 294, the Court states:

"While the state is thus apparently put in the position of objecting to the licensing of projects sanctioned by its own laws, the bill explains that the objection is chiefly to the restrictions and conditions to which, according to the terms of the act, an applicant is deemed to assent by seeking and accepting a license. These restrictions and conditions are assailed in the bill as passing beyond the field of congressional power and invading that reserved to the state. But whether they are thus invalid cannot be made the subject of judicial inquiry until they are given or are about to be given some practical application and effect."

In the case of *United States v. West Virginia*, 295 U. S. 463, 474, 79 L. Ed. 1546, 1552, the Supreme Court stated:

". . . Until the right asserted is threatened with invasion by acts of the State, which served both to define the controversy and to establish its existence in the judicial sense, there is no question presented which is justiciable by a federal court."

The Court further stated in the case of *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 324, 80 L. Ed. 688, 699:

> " . . . The pronouncements, policies and program of the Tennessee Valley Authority and its directors, their motives and desires, did not give rise to a justiciable controversy save as they had fruition in action of a definite and concrete character constituting an actual or threatened interference with the rights of the persons complaining. The judicial power does not extend to the determination of abstract questions.
>
> ". . . Claims based merely upon 'assumed potential invasions' of rights are not enough to warrant judicial intervention."

In the case of *Watson v. Buck*, 313 U. S. 387, 400; 85 L. Ed. 1416, it is said:

> "A general statement that an officer stands ready to perform his duty falls far short of such a threat as would warrant the intervention of equity."

The rule finds its most recent affirmance in the case of *United Public Workers v. Mitchell*, 330 U. S. 75; 91 L. Ed. 754, where the validity of the Hatch Act was questioned by Federal employees. Only one party, Poole, had admittedly violated the act and had been advised by the Civil Service Commission that he was to be discharged. The other petitioners had "a desire to act contrary to the rule against political activity",

but no admission was made that the Hatch Act had been violated.

The following excerpts from the court's opinion were directed specifically to this latter class of petitioners:

> "The affidavits, it will be noticed, follow the generality of purpose expressed by the complaint." 330 U. S. 75, 88; 91 L. Ed. 754, 766.
>
> "The threats which menace the affiants of these affidavits in the cases now being considered are closer to a general threat by officials to enforce those laws which they are charged to administer, . . . than they are to the direct threat of punishment against a named organization for a completed act . . .". 330 U. S. 75, 88; 91 L. Ed. 754, 766.
>
> "The power of courts and ultimately of this court, to pass upon the constitutionality of acts of Congress arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough." 330 U. S. 75, 89; 91 L. Ed. 754, 767.
>
> "No threat of interference by the Commission with rights of these appellants appears beyond that implied by the existence of the law and regulation." 330 U. S. 75, 91; 91 L. Ed. 754, 768.

The court then states:

> "We should not take judicial cognizance of the situation presented on the part of the appellants

considered in this subdivision of the opinion." 330 U. S. 75, 91; 91 L. Ed. 754, 768.

This is a clear determination by this court that something more than the mere enactment of a statute is needed to create a judicial case or controversy.

The rule of these cases is also affirmed in the case of *Continental Baking Company v. Woodring,* 286 U. S. 352, 367; 76 L. Ed. 1155, 1164, and in the case of *Great Atlantic & Pacific Tea Co. v. Grosjean,* 301 U. S. 412, 429; 81 L. Ed. 1193, 1203. The language of the foregoing cases is tersely and concisely summarized by this court when it stated in *Lehon v. Atlanta,* 242 U. S. 53, 56; 61 L. Ed. 145, 150.

> "To complain of a ruling, one must be made the victim of it. One cannot invoke, to defeat a law, an apprehension of what might be done under it, and which, if done, might not receive judicial approval."

The rule of these cases applies to suit for injunction. *United Public Workers v. Mitchell,* 330 U. S. 75, 91 L. Ed. 754; *Watson v. Buck,* 313 U. S. 387, 85 L. Ed. 1416; *Ashwander v. Tennessee Valley Authority,* 297 U. S. 288; 80 L. Ed. 688.

Under the authority of the foregoing cases, the rule is clearly and positively established that mere passage of a law which might affect an individual confers no right upon such person to contest the validity of the statute.

E. Pleading in Generalities Does Not Present the Necessary Issues of a Controversy.

Petitioners attempt to obviate the rule by the technique of alleging a series of very vague and completely general allegations embraced in the form of subjective conclusions that threats have been made against them by county officials acting in furtherance of the Board of Supervisors' order of August 26, 1947. An illustration of the type of allegations in question is found in paragraph VII of the petitioners' amended complaints, wherein it is alleged:

> "Defendant members of the Committee are now engaged in the coordination, supervision and effectuation of the 'Loyalty Check' and have threatened and do now threaten, and will, unless restrained by this Court, cause plaintiffs and all employees similarly situated to be discharged or otherwise penalized in their employment unless they execute the oath and affidavit prescribed and required by paragraph numbered 5 of said 'Loyalty Check.'" (P. 5, S. 4).

The United States Supreme Court and the courts of California have never accepted such casual claims of threats and have been alert to similar efforts to conceal an absence of essential facts behind a wall of self-serving assumptions.

Thus in *Boise-Artesian Hot and Cold Water Company v. Boise City*, 213 U. S. 276, 285; 53 L. Ed. 796, 800, this court said:

"It is true that the bill contains a vague allegation that the City has threatened to remove the company's pipe and works from the City, but no facts whatsoever are alleged showing such a threat."

In the case of *Isbrandtsen-Miller Co. v. United States,* 300 U. S. 139; 81 L. Ed. 562, plaintiff was ordered to make a report of the nature and extent of its transportation business to the Secretary of Commerce. One cause of action for injunction alleged that the order of the Secretary of Commerce was prompted by the ulterior motive of forcing plaintiff to join a conference or shipping monopoly or else suffer damage by disclosure of its business records. The court said on page 145 of U. S.:

"Aside from the principle that if the order is justified by lawful purpose, it is not rendered illegal by some other motive in the mind of the officer issuing it, the allegations of the complaint are mere conclusions, unsupported by any facts pleaded and are, therefore, insufficient."

In *United Public Workers v. Mitchell,* 330 U. S. 75, 91 L. Ed. 754 an examination of the record clearly reveals that the court did not accept the imaginative assertions of petitioners that they had been threatened and held that the alleged threats meant nothing more than what might be implied by the existence of the regulations. This finding was made by the court even in the face of an amendment to petitioners' complaint,

which set forth that the respondents had publicized in Civil Service Form 1982 the fact that they would cause the removal of any employee who violated the Hatch Act.

In the case of *Ellis Landing & Dock Co. v. Richmond*, 70 Cal. App. 720 (234 Pac. 336) the California court said:

> "This action is one brought by plaintiff as a taxpayer of the City of Richmond for the purpose of enjoining said city from proceeding, carrying out, and operating under a lease that is void because of its execution in excess of the powers of the city and in a manner other than provided by the charter. The court sustained a demurrer to the complaint without leave to amend."

At page 723 of Cal. App., the Court stated:

> The mere conclusion of the pleader in the complaint that the defendants, and their officers, employees, and agents, and each of them, long after the abandonment of the agreement, come out and threatened to proceed to act under and in pursuance to the terms of the attempted agreement without the recital of any facts showing such intention, can add nothing to the complaint . . . It is not the policy of the law to allow a writ of injunction to be invoked upon the mere declaration of a pleader that public officials are about to violate their duty without the recital of some facts justifying such conclusions."

In *McKay v. Retail Auto S. L. Union No. 1067*, 16 Cal. (2d) 311, 320; 106 Pac. 2d 373, 378, the court said:

". . . True, the plaintiffs use the words 'compel' and 'coerce' in connection with the activities of the defendants, but by these words, in the light of the only specific activities alleged, the pleader does no more than to charge that the compulsion or coercion, though peaceful, was unlawful, which, of course, is only a conclusion.

"It is a fundamental principle that the drastic sanctions of equity may not be invoked without a detailed showing of specific facts justifying such relief."

In *Davitt v. American Bakers' Union*, 124 Cal. 99, 101; 56 Pac. 775, the court said:

". . . In the face of the demurrer interposed in this case the complaint must fall. Possibly, the complaint is not sufficient to stand, even against a general demurrer, but, however that may be, it surely is too weak to stand an attack made upon it by a special demurrer. This complaint deals in generalities throughout, and the rule for drafting a pleading which asks for the interposition of equitable relief demands a statement of the specific facts upon which relief is sought. Inference, generalities, presumptions, and conclusions have no place in such a pleading."

In the case of *Renzel Co. v. Warehouseman's Union*, 16 Cal. (2d) 369, 373; 106 Pac. 2d 1, 3, the court said:

> "Facts concerning the irreparable injury which it is asserted, will result to the complainant unless protection is extended to him, must be pleaded in order that the Court may consider whether his apprehensions are well founded."

The foregoing cases clearly hold that petitioners' general allegations of "threats" without the recital of any facts which will enable this court to determine whether their conclusions are well-founded presents no justiciable issue for consideration. Under established rules of pleading, Respondents respectfully submit that the allegations in paragraphs VII through X of petitioners' amended complaints are surplusage and not considered on general demurrer. As this court said in the case of *Pierce Oil Co. v. City of Hope*, 248 U. S. 498, 500; 63 L. Ed. 381, 383:

> "The averment that the ordinance is unnecessary and unreasonable, if it be regarded as a conclusion of law upon the point which this court must decide, is not admitted by the demurrer. If it be taken to allege that facts exist that lead to that conclusion it stands no better. . . . . Only facts well-pleaded are confessed."

The same rule is affirmed in *Equitable Life Insurance Society v. Brown*, 213 U. S. 25, 53 L. Ed. 682.

Ignoring the allegations of paragraph VII through X of petitioners' amended complaints on the grounds that they are conclusions, only two facts are submitted to this Court:

(1) The status of petitioners as county employees, and

(2) The adoption of the oath and affidavit by the Board of Supervisors on August 26, 1947.

These two facts raise no issue beyond the political expediency of respondents' order.

Petitioners address an argument to this court which assumes that threats of a direct, specific and concrete nature have been made and will continue to be made against petitioners by respondents. Based upon such an assumpton, petitioners state that their complaints present a judicial case or controversy. This assertion would be persuasive if "threats" were established, but the entire argument falls because threats of the type which would establish a case or controversy have not been made and as a natural consequence not presented to the Court. To repeat the language of this court, "It is true that the bill contains a vague allegation that the city has threatened to remove the company's pipes and works from the city, but no facts whatsoever are alleged showing such a threat." *Boise-Artesian Hot and Cold Water Co. v. Boise City*, 213 U. S. 276, 285; 53 L. Ed. 796, 800. This language finds precise application to Paragraphs VII through X of petitioners' amended complaints.

F. Petitioners' Cases.

Because petitioners have assumed the existence of the very matter at issue, the cases cited by them have no application to the problem before the court. None of the cited cases change the boundaries of judicial authority to include what was termed in the case of *Chicago G. T. R. Co. v. Wellman*, 143 U. S. 339, 345, 36 L. ed. 176, 179, "an appeal from the Legislature to the Courts" with the latter "given an immediate and general supervision of the constitutionality of the former." Petitioners admit that "generalized desires against the naked unimplemented statutory provision" is insufficient to present a case or controversy. (See Petitioners' Special Reply Memorandum, page 12.)

In the case of *Aetna Life Insurance Company v. Haworth*, 300 U. S. 227, 81 L. ed. 617 (Petitioners' Special Reply Memorandum, page 7), the defendant claimed a total disability and hence the right to receive from plaintiff the proceeds of certain insurance policies. While the defendant had filed a claim with the plaintiff for payment, and had been advised that the same was rejected, the insured had not filed suit to recover the claimed benefits. Plaintiff insurance company brought suit for declaratory relief because they were fearful that the witnesses necessary to prove the relative rights and liabilities of the party might die or disappear before the insured elected to file suit. There could be no doubt but that the insured could have brought an action. In the case of *Maryland Casualty*

Company v. Pacific Coal and Oil Company, 312 U. S. 270, 85 L. ed. 826, (Petitioners' Special Reply Memorandum, page 7), the court in speaking of the *Aetna Life Insurance* case stated:

> "It is immaterial that frequently, in a declaratory judgment suit, the positions of the parties in a conventional suit are reversed: . . . "

In the case of *Maryland Casualty Company, supra*, also cited by petitioners in their Special Reply Memorandum, petitioner insured the Coal and Oil Company and agreed to indemnify them for injuries to third parties caused by automobiles hired by the insured. An automobile driven by an employee of the insured injured a party by the name of Orteca. Orteca sued the insured in a State court, and it further appears that under the State law, if Orteca recovered judgment against the insured, he could proceed to enforce payment by supplemental proceedings against the insurance carrier. The insurance carrier claimed that the automobile which caused the injury was not one hired by the insurance carrier. The insurance carrier filed its declaratory relief action in Federal Court for the purpose of bringing together all the parties before one court for a complete determination of rights. The suit was neither abstract nor hypothetical as all facts from which the actual rights and liabilities of the parties could attach had occurred at the time suit was filed. The only determinations to be made were the legal consequences flowing from the facts well pleaded.

In the case of *Perkins v. Elg*, 99 Fed. (2d) 408 (Petitioners' Special Reply Memorandum 10); defendant was required by law to deport aliens illegally in the United States. In accordance with the law, plaintiff was ordered to leave the country and threatened with deportation if she did not. In the *Perkins* case the threat of action against plaintiff was real, attested by the existence of specific facts, dehors the opinions, conclusions, conjectures and apprehensions of the petitioner. The same cannot be said in the instant case.

The instant case and the case of *United Public Workers v. Mitchell*, 330 U. S. 75, 91 L. ed. 754, are nearly identical insofar as the actual facts of each case is concerned.

Both cases involve actions for injunction and declaratory relief.

Both cases involve the existence of regulations limiting the conduct and prescribing duties of public employees.

The case at bar contains two factual differences which render the instant controversy more nebulous and ill-defined than *United Public Workers v. Mitchell, supra.*

First, in the *United Public Workers* case, supra, the petitioners were advised by the terms of the Hatch Act that violation would result in dismissal from the service; whereas, in the instant case as construed by the State Court of California, the issue of compulsion

by discharge is not presented, and even assuming that it is presented, the respondents do not have power to discharge.

Second, in the *United Public Workers* case, *supra*, this Court was advised of the proposed action of the petitioners and the manner in which the Hatch Act purportedly would concretely and adversely affect them.

In the instant case the desire of petitioners in relation to the Board order of August 26, 1947, is unknown to this court. As a result, this court is unable, upon the record presented, to even advise petitioners unless it assumes a series of hypothetical situations which might apply to all of the individual petitioners.

G. The Nonexistence of Essential Facts to Constitute a Justiciable Case or Controversy is Apparent From the Face of the Record Itself.

It was petitioners who decided when this suit would be filed. At the time suit was filed, petitioners deliberately selected and couched in vague and elusive language the allegations of paragraphs VII to X inclusive of their amended complaints. As we have already seen, the mere existence of the Board order of August 26th does not create in the constitutional sense a case or controversy—it is the legislative enactment plus, and most important, the administrative action taken in furtherance thereof, which defines and limits the judicial case. Nevertheless, in the face of these

principles, the court is advised as to the Civil Service classification, year of acquisition of such status, the national and local union affiliation of each petitioner in the *Parker* case and in the case of *Julia Learned Steiner*, the additional facts of her birthplace and educational background, including the universities attended; yet, by way of contrast, when the crux of the alleged controversy is approached, the court is left to assume its own facts and to guess as to what, if anything, the respondents had done following the adoption of the order of the Board of Supervisors on August 26, 1947.

Even a brief enumeration of the necessary but undisclosed facts which this court is asked to assume for the purpose of its decision is completely persuasive of the hypothetical nature of the petitioners' position.

Petitioners or any of them do not disclose if they have ever been or now are members of any organization which advocates the overthrow of the government by force and violence.

Petitioners or any of them do not disclose if they advocate the overthrow of government by force and violence.

Petitioners or any of them do not disclose if they have ever been or now are members of any or all of the organizations listed in Paragraph "D" of the Oath and Affidavit.

Petitioners or any of them do not disclose for what reason, if any, they will be discharged, if it be presumed that a discharge will occur.

Petitioners or any of them do not disclose for what reason, if any, they will be reported to the Board of Supervisors as subversive and disloyal.

Petitioners or any of them do not disclose for what reason if any they will suffer irreparable injury because of the alleged acts of the respondents.

In addition to these material omissions as to the position of petitioners, this court is further asked to assume that the respondents have taken certain action equally essential to the establishment of a judicial case or controversy.

This court must assume that pursuant to the Board order of August 26, 1947, and before September 3, 1947, the respondents printed and circulated 22,000 oaths and affidavits and did present them for signature to the same 22,000 employees.

This court is further asked to assume that within the same seven days, but without any facts in support thereof, the respondents, and particularly the Committee respondents had a meeting, were advised that some of the petitioners had not signed, and then, as a matter of fact did threaten the petitioners with dismissal.

This court is asked to assume that within the same seven days, but without any facts in support thereof,

the respondents, and particularly the Committee respondents, had a meeting, were advised that the petitioners had indicated membership in organizations which advocated the overthrow of constitutional government by force and violence in Paragraph "B" and marked organizations listed in Paragraph "D". This court is then asked to assume that the committee respondents did threaten petitioners with dismissal.

This court is asked to assume that within the same seven days, but without any facts in support thereof, the Auditor prepared in triplicate, an alphabetical list of 22,000 employees, transmitted these lists to the Registrar of Voters and to the Federal Bureau of Investigation, and still within the same seven days, the Registrar of Voters and the Federal Bureau of Investigation returned the same to the Committee respondents, who thereafter held a meeting, digested all of the reports and then decided, in conjunction with the answers disclosed in the oath and affidavit, that some of the petitioners should be reported to the Board of Supervisors, and further and independently of the report to the Board of Supervisors, did threaten each and all of the petitioners with discharge.

This court has consistently held to a rule that "the burden is on the plaintiff by candid and direct allegations to set forth plainly in its complaint facts sufficiently plain to show the asserted invalidity." *Missouri Pacific Railroad Co. v. Norwood*, 283 U. S. 249, 255; 75 L. Ed. 1010, 1016.

This burden is not met by the allegation of the pleaders' conclusions of law or his opinions and neither of these matters are admitted on demurrer. *Equitable Assurance Society v. Brown,* 213 U. S. 25; 53 L. Ed. 682.

In the language of this Court, "It is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void." *Fletcher v. Peck,* 6 Cranch 87, 125; 3 L. Ed. 162, 175.

In *Chicago and G. T. R. Co. v. Wellman,* 143 U. S. 339, 345; 36 L. Ed. 176, 180 the court said:

> "Our suggestion is only to indicate how easily courts may be misled into doing grievous wrong to the public and how careful they should be to not declare legislative actions unconstitutional upon agreed and general statements and without the fullest disclosure of all material facts."

In conclusion, respondents ask the Court to look through "forms of words to the substance of their (petitioners') complaint" (*Massachusetts v. Mellon,* 262 U. S. 447, 67 L. Ed. 1078) and find as did the state court that all the allegations of petitioners' amended complaints embraced in paragraphs VII through X, inclusive, are vague and insufficient, and are but figments of the imagination of petitioners, and are contrary to and impossible in law.

This court is entitled to objective proof in the form of specific and concrete allegations of fact that an ac-

tual case or controversy exists. This court should not be compelled to determine a constitutional issue upon the purely subjective claim of petitioners that they have been "threatened." To contend otherwise is to deprive the judiciary of its power to determine its jurisdiction and grant to petitioners and all other claimants the perogative to create "cases" and "controversies" where, in fact, none exist.

CONCLUSION

The contention of the petitioners is contrary to the philosophy of government by will of the people. This philosophy is preserved by the application of the First and Fourteenth Amendments, and the Sixth Article of the United States Constitution, together with the implied covenants of petitioners' trust.

Petitioners' contention is simply that the "liberty" guaranteed to them by the Constitution renders them immune from any investigation in relation to the conditions of their public trust.

Petitioners are asking that this Court declare them infallible, and, further, petitioners are asking that they may have unabridged freedom of speech which would enable them to use their positions of public trust to undermine the American theory of government by will of the people.

This Court has declared that freedom of speech includes the right to urge unrest (*Terminiello v. Chicago,*

337 U. S. 1 (preliminary print), 93 L. Ed. (Advanced Opinions) (No. 15) 865) and the right to urge to action (*Abrams v. United States*, 250 U. S. 616, 73 L. Ed. 1173; *Thomas v. Collins*, 323 U. S. 516, 89 L. Ed. 430) Petitioners' contention, reduced to a reality, is that they have the right to hold positions of public trust and simultaneously urge unrest among the very people that they are hired to represent and urge to action the forceful overthrow of the government lawfully chosen by the people.

It is respectfully contended by the respondents that the judgment of the Court below should be affirmed.

Respectfully submitted,

HAROLD W. KENNEDY,
County Counsel,
and
GERALD G. KELLY,
Deputy County Counsel,
Counsel for Respondents.

ROBERT L. TRAPP,
Deputy County Counsel,
Of Counsel.

Appendix

APPENDIX

Exhibit "A"

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

JULIA LEARNED STEINER, Plaintiff, vs. RAYMOND V. DARBY, as Chairman of Board of Supervisors, Los Angeles County; JOHN ANSON FORD, ROGER JESSUP, LEONARD J. ROACH, and WILLIAM A. SMITH, as members of said Board of Supervisors, Defendants.	)	No. 534177

OPINION

The defendant Board of Supervisors on August 26, 1947, ordered each officer and employee under its jurisdiction to:

(1) Execute the following oath: "I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and the laws of the State of California against all enemies, foreign and domestic; that I will

bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office or employment on which I am about to enter or am now engaged, so HELP ME GOD."

(2) Execute an affidavit (a) that he does not advocate the overthrow of the government by violence except .....; (b) that he has never used any aliases except .....; (c) that he has never been a member of or supported any of some one hundred forty named organizations except .....

The plaintiff (a civil service employee of this county) seeks an injunction to prevent the defendants from requiring her or any of the county employees similarly situated to take the oath and sign the affidavit. She also seeks declaratory relief. There are before the court defendants' demurrer to the complaint, their motion to strike and plaintiff's order to show cause for a preliminary injunction.

No valid reason has been suggested by plaintiff why county employees who are citizens of the United States and residents of the State of California (as plaintiff alleges she is) should not take the oath of allegiance. In fact, in her opening brief page 27, line 28, she says: "Plaintiff does not complain about the requirement of an oath to faithfully perform her duties in public office." The oath is not substantially dif-

ferent from the oath of office which every elected official is required to and does take.

Our situation is not comparable to that in West Virginia Board of Education vs. Barnett, 319 U. S. 624, where the school authorities attempted to compel all public school children, regardless of their religious beliefs and under penalty of expulsion for non-compliance, to exhibit their loyalty to the United States by saluting the flag. In that case the form of the flag salute was contrary to the religious beliefs of the plaintiff.

As to the affidavit, if any county officer or employee advocates the overthrow of the government by force it is high time this were known. Government Code, Section 18200, provides "a person shall not be knowingly employed by any state agency or court who either directly or indirectly carriers on, advocates, teaches, justifies, aids or abets a program of sabotage, force or violence, sedition or treason against the government of the United States or of this state."

The Constitution contains no provision which gives county employees the right to advocate the overthrow of the government by force. The plaintiff relies strongly on Communist Party v. Peek, 20 Cal. 2d, 536, which holds that the legislature may not deny the Communist Party a place on the ballot. Plaintiff points out that the law in question was a predetermination by the legislature, that the Communist Party ad-

vocates the forceful overthrow of the government and as such it was void. This is a far cry from holding that the Board of Supervisors may not inquire whether a county employee does advocate the overthrow of the government by force.

Plaintiff also relies on Danskin v. San Diego Unified School District, 28 Cal. 2d 536, which held invalid an administrative requirement that a person who wanted to use school buildings for a public meeting had to sign an affidavit that he did not advocate, and that he was not affiliated with any organization which advocated the overthrow of the government by force. The Supreme Court said, page 542, "However reprehensible a legislature may regard certain convictions or affiliations it cannot forbid them if they present 'no clear and present danger that they will bring about the substantive evils' that the legislature has a right to prevent."

Plaintiff would have us believe that the Board of Supervisors may not even inquire whether a public employee advocates the overthrow of the government by force without violating his constitutional rights. The Danskin case does not so hold nor does any case cited by the plaintiff so hold.

Plaintiff's fundamental error lies in her failure to recognize that the entire loyalty program as it now exists is a fact finding inquiry to determine whether any county employee advocates the overthrow of the

government by force. In making such inquiry the Board of Supervisors does not have to stop when an employee answers "no"; it may pursue the inquiry further by asking about membership in specific organizations, not with the idea that such membership will, of itself, operate to discharge the employee but with the idea that membership in any of the named organizations, including membership in the Communist Party, may provide clues for further investigation.

Plaintiff's position is also based on the erroneous assumption that refusal to take the oath and sign the affidavit has been made a ground for discharge. She alleges (Par. IV of the first cause of action of the complaint): " . . . the defendants adopted . . . a so-called 'loyalty program' . . . as a condition of continued employment by said plaintiff . . . " The latter part of this allegation is contrary to the written report adopted by the defendant, copies of which are attached to the complaint marked Exhibits A and B, and which constitute the entire loyalty program to date. The complaint alleges (page 3, line 7), "Said report constitutes the policy of a program of said Board and said defendants." Allegations in the body of a complaint as to the contents of a written instrument, a copy of which is attached thereto, and which allegations are contrary to the terms of that written instrument are surplusage and are to be disregarded. (Washer vs. Bank of America, 21 Cal. 2d 822.) Nor

is the complaint saved by the allegations set forth in paragraph 5 of the first cause of action: "The defendants, through the defendant SMITH, have announced that any employee found to be a Communist or refusing to sign the 'Loyalty oath and affidavit' will be discharged, the statement by the defendant SMITH being, 'Any employee found to be a Communist or refusing to sign the loyalty oath and affidavit will be out—period!'"

Action of the Board of Supervisors is taken only by order, resolution or ordinance passed by a majority of that Board. (Pol. Code, Sec. 4031). No such action of the Board is alleged. If plaintiff indicates within ten days after the order based on this opinion is made that she can amend her complaint to allege that the defendant Board has taken such action I will give her leave to amend. Otherwise I must treat paragraph 5 as surplusage for it is contrary to Exhibits A and B which plaintiff alleges constitute the policy of the defendants. Furthermore, the Board of Supervisors has no power to discharge a civil service employee without a public hearing by the Civil Service Commission. (Los Angeles County Charter, Sec. 34, subsec. 13).

As yet no penalty has been prescribed by the Board of Supervisors for refusal to take the oath or sign the affidavit, nor has any penalty been prescribed for any employee who states he is a member of the Communist Party or any of the other named organizations.

At this point and until the contrary appears we must assume that the Board will not illegally discharge an employee.

Not by any stretch of the imagination am I holding that mere membership in any of the organizations named in the affidavit, without proof that the employee member advocates the overthrow of the government by force, is ground for discharge. Nor am I ruling on the effect of a refusal of an employee to take the oath and sign the affidavit. As to all of these questions this action is premature. Nor can the complaint be saved by the second cause of action which is for declaratory relief. No justiciable controversy has arisen or can arise as to the effect of an employee's refusal to take the oath and sign the affidavit until the defendants have announced what action they will take in case of such refusal. Furthermore, it is inconceivable that there could be anything in plaintiff's affidavit, if signed, which could give rise to such a justiciable controversy because she alleges (Par. I of the first cause of action) that she is not a member of the Communist Party nor of any of the named organizations.

The only possible present controversy is as to the right of the defendants to conduct this fact-finding inquiry. My ruling, stated above, is that the defendants have a right to conduct the loyalty test in its present form. Therefore there is no controversy left which could be decided under the second cause of action.

The demurrer to the complaint is sustained without leave to amend although the court will entertain the application of above mentioned if made. The motion to strike is off calendar. The preliminary injunction is denied.

Dated January 8, 1948.

FRANK G. SWAIN
Judge of Superior Court.

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Supreme Court of the United States

OCTOBER TERM, 1948

No. 711

HELEN PARKER, et al.,

Petitioners,

vs.

COUNTY OF LOS ANGELES, et al.

No. 712

JULIA LEARNED STEINER,

Petitioner,

vs.

COUNTY OF LOS ANGELES, et al.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF

The Council on African Affairs, Inc. (hereinafter called the Council) respectfully moves for leave to file a brief amicus curiae in support of petitioners herein. Consent to such filing has been granted by counsel for petitioners in each case. The County of Los Angeles denied its consent unless certain conditions, set forth in a letter on file with the Clerk of the Court, were met. Although such conditions are improper and onerous and could not be fulfilled by the Council, it is nevertheless respectfully requested for the reasons set forth hereafter that the motion for leave to file a brief amicus curiae be granted.

The Interest of the Council on African Affairs, Inc.

The Council is a membership corporation organized to study the conditions of life and work in Africa and to promote the welfare of the African people. Its activities include the holding of meetings, forums and discussions, the distribution of literature, memorials and studies on conditions and social status of native Africans and the solicitation of funds for the support of these projects.

Obviously the Council, as do similar organizations, relies upon its ability to reach large segments of the American people with the information it has at its disposal and seeks their aid in the accomplishment of the Council's purposes. It is therefore particularly susceptible to any abridgement of the right of any group of the American people to associate with, join or directly or indirectly support this organization. It is the contention of the Council that the Oath and Affidavit promulgated by the County of Los Angeles will have the inevitable tendency to curb its constitution right thus to solicit support.

Argument

The Council associates itself with the brief of petitioners herein which sets forth fully the constitutional issues raised by the Affidavit and Order. It respectfully urges that such constitutional infirmities are fatal to the Oath and Affidavit and that the judgment of the court below be reversed.

However, it wishes to emphasize certain harmful aspects of the entire procedure adopted by the County of Los Angeles.

The entire concept of the testing of "loyalty" by determining to what organizations a person belongs is repugnant to the constitutional guarantees of freedom of thought, speech, opinion and association. In every period when such repressive test oaths have been erected, the

common sense and wisdom of the American people have ultimately caused their repudiation.

The tensions arising from the vital issues facing the world after World War II have again given rise to repressive measures. The Affidavit and Oath under review here is but a local application of the Federal Loyalty Order (Executive Order No. 9385) which initiated the Federal "loyalty" program. By virtue of and acting pursuant to such Order, the Attorney General of the United States has purported to set up a list of organizations, membership in which is deemed to be "evidence of disloyalty".

The various states and municipalities, not to be outdone in seeking to impose conformity of thought, have likewise promulgated such oaths, lists, tests and similar incursions into the operation of men's minds. No longer is a person's ability, competence or merit measured by his intrinsic qualities, but they are now tested solely by a subjective standard of "loyalty". One of the tests is membership in an organization.

The Council submits, and the Court has repeatedly recognized, that opinions, thoughts and beliefs are personal and are not to be measured by the organizations, associations or groups to which a person belongs (*Schneiderman* v. *United States*, 320 U. S. 118). The repressive effect of this Oath and Affidavit has particular impact upon an organization such as the Council. Functioning as it does in the supercharged field of international relations where allegations of "loyalty" and "subversiveness" are freely bandied about, the Council and its membership may at any time find itself on a similar list. Opposition to the Marshall Plan, to which the Council is on record as being opposed, has been frequently stated in the Congress of the United States to be "disloyal". Yet the essence of any political democracy is the right of those who disagree with a particular policy of the Government to express themselves through organizations in order to make the weight of their opinions and beliefs felt.

The vice of the listing attempted by the County lies in the fact that free inquiry, thought, belief and association, which are essentials of an expanding democracy, are virtually destroyed for the employees of the County of Los Angeles. Not knowing at any time when an organization to which they belong may be added to the list promulgated by the County officials, it would indeed be a hardy employee who will in the future join any organization that expresses a viewpoint even remotely contradictory to that of either federal, state or city administrations. The political democracy of which the United States is justly proud cannot function in any such strait jacket.

For the foregoing reasons, it is respectfully urged that the decision of the court below is erroneous and should be reversed.

Respectfully submitted,

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF

The Civil Rights Congress (hereafter called CRC) respectfully moves for leave to file a brief amicus curiae in support of petitioners herein. Consent to such filing has been granted by counsel for petitioners in each case. The County of Los Angeles denied its consent unless certain conditions, set forth in a letter on file with the Clerk of the Court, were met. Although such conditions could not be fulfilled by CRC, and it is submitted are improper and onerous conditions, it is nevertheless respectfully requested for the reasons set forth hereafter that the motion for leave to file a brief amicus curiae be granted.

Interest of the Civil Rights Congress

The challenge to the constitutional guarantees of freedom of thought, opinion and assembly contained in the Oath and Affidavit promulgated by the County of Los Angeles and supported by the decision of the court below has prompted the CRC to file a brief amicus curiae in support of the petitions.

CRC is a nation-wide organization, with chapters in principal cities, dedicated to the protection, strengthening, enforcement and enlargement of those civil rights guaranteed to all persons by the Constitution of the United States. In order to achieve these objectives, CRC's constitution provides that it will engage in activities along the following lines:

> "To strive constantly to safeguard and extend all democratic rights, especially the rights of labor, and of racial, political, religious and national minorities;
>
> "To combat all forms of discrimination against these groups;
>
> "To defend and aid victims of the fight for these groups;
>
> "To fight against domestic fascism and all of its forms —jim crow, anti-Semitism, red-baiting, discrimination against the foreign born.
>
> "To these ends the Civil Rights Congress dedicates itself—
>
> "To educate, mobilize, and help coordinate the efforts of the democratic forces of America in the defense and advancement of their civil rights and democratic rights;
>
> "To promote the unity of all groups and individuals dedicated to the defeat of fascism in all its forms."

However, CRC's interest in this proceeding is not limited to the vindication of these fundamental guarantees

only insofar as petitioners are affected by the decision below. CRC itself is listed as one of the organizations as to which a county employee must, under oath, admit or deny membership. It therefore has an additional and direct interest in this proceeding. Freedom of association insofar as CRC as an organization is concerned is at stake in this proceeding.

Preliminary Statement

The Oath and Affidavit adopted by the County of Los Angeles is an application on a local scale of the political test oaths instituted by the federal government through Executive Order 9385. The impact of these tests has been so great as to raise the gravest doubts as to the continued existence of the freedom of association, inquiry and opinion which is the heart of any democracy.

This attempt to decree political orthodoxy is not without precedent in the United States. And, significantly, in each historical period when such repressive measures have gained ascendancy, the common sense of the American people has subsequently repudiated them.

Thus, 1798 saw the enactment of the Alien and Sedition Laws (1 Stat. 570; 1 Stat. 596) resulting from the well-propagandized and baseless fears that the French Government was spreading "pro-French" propaganda throughout the United States. The critical state of Franco-American relations in that period nurtured those illusions. The results of the Alien and Sedition Laws and the prosecutions thereunder were so shocking to a people that only twenty-two years earlier had issued a Declaration of Independence speaking of certain "inalienable rights", that the Federalist Party proponents of the legislation were utterly discredited and their organization repudiated.

Jefferson repealed the Alien and Sedition Laws and pardoned all who had been convicted under them. In his inaugural address he proclaimed a principle of freedom of political expression that is the touchstone of political democracy:

> "If there be any among us who wish to dissolve this Union, or to change its republican form, let them stand undisturbed, as monuments to the safety with which error of opinion may be tolerated where reason is left free to combat it" (8 *Jefferson, Writings,* 1, 3, (1897)).

After the next great period of tension in the United States—the Civil War—the Congress as well as some of the state legislatures passed laws requiring loyalty oaths before certain professions could be practiced. Although these loyalty oaths resulted from a conflict during which loyalty to the preservation of Union was paramount, the Court struck them down as ex post facto laws and bills of attainder (*Cummings* v. *Missouri*, 4 Wall. 277 (1867); *Ex parte Gerland*, 4 Wall. 333 (1867)).

The next attempt to enforce political conformity followed World War I and the scars inflicted upon our democracy are still visible. The experience of New York State is perhaps typical of that throughout the United States and should be recounted because of its basic similarity to the issues presented herein.

The Lusk Anti-Sedition Laws were enacted by the New York State Legislature on the wave of hysteria and "red scare" that followed World War I and which caused it to expel five assemblymen duly elected on the Socialist ticket. The most sensitive and vulnerable group of public employees—teachers—were singled out by the Lusk Laws for investigation and discharge if they advocated a "change in the form of government of the United States." The tragic consequences of this law upon the teachers and the public education system and the evils resulting therefrom are described in Beale, *Are American Teachers Free*, Scribners, pp. 61, et seq.

So great was the public revulsion, that they were repealed in 1923. Governor Alfred E. Smith, in signing the repealer, stated:

> "The Lusk Laws * * * are repugnant to American democracy. * * * Freedom of opinion and freedom of speech were by these laws unduly shackled and an unjust discrimination was made against the members of a great profession. In signing these bills, I firmly believe I am vindicating the principle that within the limits of the penal law every citizen may speak and teach what he believes" (Smith, *Public Papers*, 292 (1923)).

The principles expressed in this message command the wholehearted approbation of the American people and are singularly apposite to the enactment under review herein.

The tensions following World War II resulted in a spate of loyalty oaths for employment, both state and federal. Indeed it has even been transferred to the field of private employment. These attempts to legislate conformity, decree orthodoxy, dictate what are "safe" thoughts and what are to be punished, prescribe modes of conduct and the limit of association under the guise of determining "loyalty" are contrary to the constitutional form of government enacted by our Founding Fathers. Moreover, and perhaps of greater significance, the history of similar enactments indicates that they are repulsive to the American people and are ultimately repudiated by them (Chafee, *Free Speech in the United States*, pp. 513, et seq.).

The Oath and Affidavit required of petitioners falls directly within that pattern of repressive legislation described above. In addition to its constitutional infirmities, set forth below, it transgresses against the spirit of American democracy so well epitomized in Mr. Justice Jackson's trenchant phrase:

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can

prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein" (*West Virginia Board* v. *Barnette*, 319 U. S. 624, 642).

ARGUMENT

POINT I

The Oath and Affidavit violate Amendments I and XIV of the Constitution by denying freedom of thought, discussion and association.

The Oath and Affidavit adopted by the County of Los Angeles requires all employees to disclose whether they have ever "been a member of or directly or indirectly supported or followed" any one of 144 named organizations—including CRC—none of which are unlawful or illegal—and two named publications—both of which are circulated through the mails.

In addition, they are required to disclose under oath whether since December 7, 1941, they have ever advocated or been a member of any political party or organization that advocates the overthrow of the Governments of the United States, the State of California, or the County of Los Angeles. Not satisfied with this affirmation, the County imposes a prior restraint that its employees will not, in the future, while in the employ of the County, thus advocate or join any political party or organization which thus advocates.

Failure to execute the Oath and Affidavit results in dismissal from employment. To make the pattern complete, if a response to the Oath and Affidavit or the result of an independent investigation by a County agency reveals that an employee is "subversively inclined," his name shall be publicly reported together with a recommendation for appropriate action.

The freedoms guaranteed by the 1st Amendment to the Constitution have been embodied in the 14th Amendment insofar as state action is concerned. The reasons have been lucidly stated by Mr. Justice Cardozo:

> "We reach a different plane of social and moral values when we pass to the privileges and immunities that have been taken over from the earlier articles of the Federal Bill of Rights and brought within the Fourteenth Amendment by a process of absorption. These in their origin were effective against the federal government alone. If the Fourteenth Amendment has absorbed them, the process of absorption has had its source in the belief that neither liberty nor justice would exist if they were sacrificed. Twining v. New Jersey, supra, 211 U. S. 78, at page 99, 29 S. Ct. 14, 19, 53 L. Ed. 97. This is true, for illustration, of freedom of thought and speech.
>
> "Of that freedom one may say that it is the matrix, the indispensable condition, of nearly every other form of freedom. With rare aberrations a pervasive recognition of that truth can be traced in our history, political and legal. So it has come about that the domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states, has been enlarged by latter-day judgments to include liberty of the mind as well as liberty of action. The extension became, indeed, a logical imperative when once it was recognized, as long ago it was, that liberty is something more than exemption from physical restraint, and that even in the field of substantive rights and duties the legislative judgment, if oppressive and arbitrary, may be overridden by the courts. Cf. Near v. Minnesota, supra; DeJonge v. Oregon, supra." *Palko* v. *Connecticut*, 302 U. S. 319, 326-327.

That "liberty of mind" which Mr. Justice Cardozo holds is protected by the 14th Amendment surely must include the liberty to formulate and express opinions on matters of public concern, to seek to influence others as to the correctness of these views through the press and to

join other like-minded persons in organizations and associations to foster and express these opinions.

> "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people * * * is a fundamental principle of our constitutional system" (*Stromberg* v. *California*, 283 U. S. 359, 369). See also *Thornhill* v. *Alabama*, 310 U. S. 88, 95.

Measuring these basic concepts against the Affidavit and Oath reveals the enormity of the damage caused by this enactment. The liberties of thought and the opportunities for free political discussion, guaranteed by the 1st Amendment, are thereby annihilated. One hundred and forty-four organizations, each of which is devoted to a cause which its sponsors or adherents consider of importance and none of which is illegal are listed. It would indeed be a hardy County employee who would join one of these organizations, including CRC, in the face of this blacklist.

> "Congress shall make no law * * * abridging * * * the right of the people peaceably to assemble * * *"

states the 1st Amendment. But the County of Los Angeles has abridged this freedom of association for petitioners and other County employees. It has, by issuing a blacklist of organizations, circumscribed the area wherein these employees may freely band together with other of similar interest.

And the range of organizations reveals that virtually every aspect of modern thought, every problem of the modern world, every controversy that has gripped the attention of thinking men, every issue over which difference of opinion may exist, is covered. It extends from political organizations (Farmer-Labor Party) to devising methods of controlling inflation (Hold the Price Line Committee), from trade unions (Marine, Cooks & Stewards) to those who believe in the principles for which the last war was fought (Anti-Nazi League), from

groups like the amicus herein (CRC) to organizations devoted to extending the benefits of suffrage to all (National Committee to Abolish the Poll Tax).

It therefore follows that under pain of drastic penalties —including the awful stigma of "disloyalty"—County employees must divorce themselves from all organizations concerned with events of import. And by the same token it deprives the body politic of the benefit of the information, knowledge and ability of a large group of persons with intimate knowledge of the practical function of government.

> "There is some modicum of freedom of thought, speech and assembly which all citizens of the Republic may exercise throughout its length and breadth which no state, nor all together, nor the nation itself, can prohibit, restrain or impede."
>
> *Thomas* v. *Collins*, 323 U. S. 516, 543.

See also:

> *DeJonge* v. *Oregon*, 299 U. S. 353;
> *Martin* v. *Struthers*, 319 U. S. 141.

The fundamental nature of this "modicum of freedom of thought, speech and assembly" has caused this court to discard the usual and customary presumption of constitutionality "when the legislation on its face or in specific application restricts the right of conscience, expression and assembly protected by the Amendment, as are given to other regulations having no such tendency" (*United States* v. *C.I.O.*, 335 U. S. 106, 140).

This court has upheld these freedoms in *DeJonge* v. *Oregon*, 299 U. S. 353; *Herndon* v. *Lowry*, 301 U. S. 242; *Hague* v. *C.I.O.*, 307 U. S. 496; *Thornhill* v. *Alabama*, 310 U. S. 88; *Thomas* v. *Collins*, 323 U. S. 516; *Bridges* v. *Wixon*, 326 U. S. 135; *Schneiderman* v. *United States*, 326 U. S. 135; and *Knauer* v. *United States*, 328 U. S. 654.

The Oath and Affidavit clearly restricts "the right of conscience, expression and assembly" and the decision below is therefore erroneous.

POINT II

The Affidavit and Order incorporate the unconstitutional doctrine of guilt by association.

It is of the essence of all loyalty tests, including the one under consideration, that they must apply the unconstitutional doctrine of guilt by association. This tendency has been denounced by a prominent attorney, with a long record of distinguished public service, John Lord O'Brian (*Loyalty Tests and Guilt by Association*, 61 Harvard Law Review 592). And his condemnation finds support in the decisions of this court:

> "The doctrine of personal guilt is one of the fundamental principles of our jurisprudence. It partakes of the very essence of the concept of freedom and due process of law" (*Bridges* v. *Wixon*, 326 U. S. 135, 163).
>
> "Under our traditions beliefs are personal and not a matter of mere association • • •" (*Schneiderman* v. *United States*, 320 U. S. 118, 136).
>
> "Guilt with us remains individual and personal • • •" (*Kotteakos* v. *United States*, 328 U. S. 750, 772).

In the Nuremberg trials the doctrine of guilt by association was rejected. Membership in a Naxi organization, without more, was not accepted as proof of guilt (Emerson, *Loyalty Among Government Employees*, 58 Yale Law Journal 1, 92 n. 345).

See also: *Memorial of the Special Committee Appointed by the Association of the Bar of the City of New York*, 5 N. Y. Legis. Doc. No. 30, 143rd Session (1920).

The reason for this salutary principle is not far to seek. It is no secret that not all the members of a particular association share the same views on all the questions of the day. Persons banding into organizations often submerge differences of opinion on other subjects in order to

push and advocate the central idea they have in common. Do members of the Republican Party espouse the foreign policy views of Senator Taft or Senator Vandenberg? Are members of the Democratic Party committed to the views of Representative Rankin or President Roosevelt? The past war furnishes an apt illustration of the union of various ideologies in support of a common objective—the defeat of fascism.

Yet the Affidavit and Order necessarily imputes to all supporters of the listed organization each and every one of the objectives of the organization. The Court in *Schneiderman* v. *United States*, 320 U. S. 118, recognized the fallacy inherent in that proposition.

The vice of the Affidavit and Order extends more deeply. It speaks not only of being a member in the organization but also of one who "directly or indirectly supported or followed" the organization. Shall one who attended a meeting of the Harry Bridges Defense Committee, one of the cited organizations, be deemed to have "directly or indirectly supported or followed" that organization? And if so, to what extent? Shall all the doctrines, thoughts and opinions of the different members of that Commission be imputed to such person?

Has a contributor to the Hold the Price Line Committee, one of the listed organizations, "directly or indirectly supported or followed" the theories of the members of that Committee as to the best means by which inflation can be combatted and a drastic rise in prices prevented.

The difficulties suggested above illustrate the enormity of this doctrine of guilt by association and the necessity for affirmation by the Court that guilt can only be personal. It is only upon proof of illegal or unlawful acts that sanctions can be imposed. The Affidavit and Order seeks to impose sanctions on mere membership in organizations without proof of illegal actions or activities either by the association or the members. The court has never sustained such standards of guilt.

POINT III

Violations of constitutional guarantees cannot be excused merely because petitioners are County employees.

Much of the thinking that a person surrenders some of his constitutional liberties by accepting government employment stems from the frequently quoted but rarely analyzed generalization of Mr. Justice Holmes in *McAuliff v. Mayor of New Bedford*, 155 Mass. 216, that:

> "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman."

All that was decided in that case was reaffirmed by the Court in *United Public Workers v. Mitchell*, 330 U. S. 75, relied on by the court below, and that is that the government may deal in specific ways with specific evils that may arise from government employment. It furnishes no support for the sweeping assertion of the court below that petitioners in accepting government employment "impliedly surrendered" their constitutional guarantees.

Indeed, the *Mitchell* case itself asserted that "none would deny" that Congress has no power to "enact a regulation providing that no Republican, Jew or Negro shall be appointed to federal office, that no federal employee shall attend Mass or take any active part in missionary work" (330 U. S. 75, 100). The opinion also pointed out that the Hatch Act does not restrict "Expressions, public or private, on public affairs personalities and matters of public interest, not an objective of party action. * * * (id.)."

Precisely this denial is involved here. The Oath and Affidavit lists 144 lawful organizations and two lawful publications and demands of petitioners and all County employees an accounting of the manner in which they have exercised the constitutionally guaranteed rights of speech, thought, opinion and association. The very inquiry itself

limits the right of expression on matters of public interest which the *Mitchell* case, supra, held could not be thus abridged.

The Court of Appeals of the State of New York has also repudiated the doctrine that government employees "impliedly surrender" their constitutional rights, as the court below asserted. In *People* v. *Crane*, 214 N. Y. 154, 168; aff'd 295 U. S. 195, Justice Cardozo stated:

> "A citizen may not be disqualified because of faith or color from service as a juror * * *. For like reasons we assume that he may not be disqualified because of faith or color from serving the state in public office or employment. It is true that the individual, though a citizen, has no legal right in any particular instance to be selected as a contractor by the government. It does not follow, however, that he may be disqualified from service, unless the proscription bears some relation to the advancement of public welfare."

Just as petitioners by accepting employment by the County nevertheless remain citizens of the United States, the County of Los Angeles, in relation to the petitioners' employment, is an employer. As such it is subject to the limitations of the Federal Constitution and bound to respect the constitutional guarantees contained therein. By reason thereof it has no power to encroach upon the liberties guaranteed to the people of the United States, even though the particular persons involved happen to be its employees.

There is a tragic irony in the position adopted by the County. In the name of preserving the Constitution of the United States, the County of Los Angeles has destroyed those very liberties and freedoms which are its sine qua non—the freedoms of thought, opinion, speech and association. It denial to any segment of the nation means, if we read history truly, an ultimate denial to all the nation.

CONCLUSION

The Oath and Affidavit violate freedoms of thought, expression, opinion and association guaranteed by the United States Constitution as well as incorporating the unconstitutional doctrine of guilt by association. In addition, it denies to government employees inherent constitutional liberties not subject to abridgement by virtue of such employment. The decision of the court below is therefore erroneous and should be reversed.

Respectfully submitted,

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IN THE

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Petitioners,

vs.

COUNTY OF LOS ANGELES; WILLIAM A. SMITH, LEONARD J. ROACH, JOHN ANSON FORD, RAYMOND V. DARBY and ROGER W. JESSUP, and Each of Them as Members of the Board of Supervisors of Said County; WAYNE ALLEN, as Chief Administrative Officer of Said County; HAROLD W. KENNEDY, as County Counsel of Said County; CHARLES C. MACK, G. H. NEWLAND and T. J. O'KEEFE, and Each of Them, as Members of the Civil Service Commission of Said County; CLIFFORD AMSDEN, as Secretary and Chief Examiner of Said Commission; MICHAEL DONOGHUE, as Registrar of Voters of Said County,

Respondents.

ON CERTIORARI TO THE DISTRICT COURT OF APPEAL, SECOND APPELLATE DISTRICT OF THE STATE OF CALIFORNIA.

Motion for Leave to File Brief and Brief of the National Lawyers Guild, Los Angeles and Beverly Hills Chapters, as Amicus Curiae.

NATIONAL LAWYERS GUILD, LOS ANGELES AND HOLLYWOOD CHAPTERS.

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Respondents.

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

The Los Angeles and Beverly Hills Chapters of the National Lawyers Guild are organizations of members of the California Bar, devoted to the preservation of the rights of the people guaranteed by the Constitution of the United States.

This case presents issues with respect to the rights of freedom of speech and association which the Chapters believe to be of great importance to the nation. Upon the determination of these issues depends the rights of millions of American citizens. The said Chapters of the National Lawyers Guild conceive it to be their public duty, as bar associations, to bring to this Court the reasons which compel them to conclude that the judgment below should be reversed. Therefore, the Los Angeles and Hollywood-Beverly Hills Chapters of the National Lawyers Guild respectfully request leave to file a brief as *amicus curiae*.

Respectfully submitted,

NATIONAL LAWYERS GUILD, LOS ANGELES AND HOLLYWOOD CHAPTERS.

LOREN MILLER,

Attorney for the Los Angeles and Hollywood-Beverly Hills Chapters, National Lawyers Guild.

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Thomas Jefferson, too, was concerned over invasions of the liberty of conscience and enforced testimony as to belief. In 1803 he wrote to Benjamin Rush:

> "It behooves every man who values liberty of conscience for himself, to resist invasions of it in the case of others; or their case may, by change of circumstances, become his own. It behooves him, too, in his own case, to give no example of concession, betraying the common right of independent opinion, by answering questions of faith, which the laws have left between God and himself." (*Selected Writings*—Modern Library, 1944, p. 567.)

In 1832, John Quincy Adams, then a member of the United States Congress, stated:

> "It cannot be within the competence of a Committee of the House to institute a general search and compel the citizens on oath to purge themselves if innocent and criminate themselves, if guilty, and bring with them their papers to be ransacked in a roving hunt for unspecified crimes." (23 Congress, 1st Session, Debates, Vol. X, pt. 5, app., p. 194.)

In 1943, when West Virginia sought to compel the flag salute by children whose religion dictated otherwise, the requirement of this oath was stricken down by the Supreme Court, relying on the Fourteenth Amendment (*West Virginia v. Barnette*, 319 U. S. 624). Mr. Justice Murphy, concurring, added:

> "The right of freedom of thought and religion . . . includes both the right to speak freely and the right to refrain from speaking at all."

The Fourth and Fifth Amendments were spawned from history and the courts have taken judicial notice of that history when they have construed both of these amendments broadly.

> "So deeply did the iniquities of the ancient system impress themselves upon the minds of the American colonists that the States, with one accord, made a denial of the right to question an accused person a part of their fundamental law; so that a maxim which in England was a mere rule of evidence became clothed in this country with the impregnability of a constitutional amendment." (*Brown v. Walker,* 161 U. S. 591.)

> "It would not be possible to add to the emphasis with which the framers of our Constitution and this court (in *Boyd v. United States,* 116 U. S. 616, in *Weeks v. United States,* 232 U. S. 383, and in *Silverthorne Lumber Co. v. United States,* 251 U. S. 385) have declared the importance to political liberty and to the welfare of our country of the due observance of the rights guaranteed under the Constitution by these two amendments. The effect of the decisions cited is: That such rights are declared to be indispensable to the full enjoyment of personal security, personal liberty, and private property; that they are to be regarded as of the very essence of constitutional liberty; and that the guaranty of them is as important and as imperative as the guaranties to the other fundamental rights of the individual citizen;—the right to trial by jury, to the writ of habeas corpus, and to due process of law. It has been repeatedly decided that these Amendments should receive a liberal construction, so as to prevent stealthy encroachment upon or 'gradual depreciation' of the rights secured by them, by imperceptible practice of courts, or

by well-intentioned but mistakenly over-zealous executive officers." (*Gouled v. United States* (1920), 255 U. S. 298, 303; Clarke, J.)

The investigation into the political, economic and social beliefs and associations of an individual is clearly prohibited by the First Amendment.

> "The freedom and liberty to express ourselves privately and to hold private assemblies for lawful purposes and in a lawful manner is protected as much by the First Amendment as the right to do so publicly. Limitation in this regard would be such a serious encroachment upon our liberties and freedom as to render the pre-eminent rights guaranteed by the First Amendment nugatory in large areas of legitimate action." (*Local 309 UFWA (CIO) v. Gates, Governor of Indiana*, 75 Fed. Supp. 620.)

The system of the secret ballot was devised to the end that a person could hold his political beliefs to himself inviolate and free from possible penalty and stigma. Today, the right is recognized as indispensable to the functioning of a democracy.

> "The object of this requirement was to secure the entire independence of the electors, to enable them to vote according to their own individual convictions of right and duty without the fear of giving offense or exciting the hostility of others." (*People v. Cicott*, 16 Mich. 283.)

The propositions that a governmental agency can test its employees for what officials think is political heresy is untenable under the guaranties of the First Amendment, and that such officials may be allowed to obtain this information by compulsory confession, is likewise untenable under the guaranties of the Fourth and Fifth Amend-

ments. As Mr. Justice Jackson said in the *Barnette* case, *supra:*

> "If there is one fixed star in our Constitutional Constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by ward or act their faith therein." (319 U. S. 624.)

Conclusion.

This Court is called upon by the urgent needs of our democratic traditions to preserve the rights of political belief and association under the First Amendment by refusing to allow governmental power to be used to limit or destroy the exercise of such rights, in derogation of the Fourth and Fifth Amendments.

In these critical days, one can be guided by the words written by Mr. Justice Cardozo in his essay "Liberty and Government" in "The Paradoxes of Legal Science," that:

> "Experimentation there may be in many things of deep concern, but not in setting boundaries to thought; for though freely communicated is the indispensable condition of intelligent experimentation, the one test of its validity."

Respectfully submitted,

NATIONAL LAWYERS GUILD, LOS ANGELES AND HOLLYWOOD CHAPTERS.

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ON CERTIORARI TO THE DISTRICT COURT OF APPEAL, SECOND APPELLATE DISTRICT OF THE STATE OF CALIFORNIA.

Motion for Leave to File Brief as Amicus Curiae and Brief in Support of Petitioners, Submitted by Los Angeles Area Council of American Veterans Committee as Amicus Curiae.

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ON CERTIORARI TO THE DISTRICT COURT OF APPEAL, SECOND APPELLATE DISTRICT OF THE STATE OF CALIFORNIA.

Motion for Leave to File Brief as Amicus Curiae.

The Motion of the Los Angeles Area Council of American Veterans Committee for leave to file brief as *amicus curiae* in the above entitled proceedings respectfully shows as follows:

(1) The Los Angeles Area Council of the American Veterans Committee is a veterans' organization situated in the County of Los Angeles, State of California.

(2) It was originally listed as one of the organizations referred to in Paragraph D of the required Oath and Affidavit involved herein, but was subsequently removed from that list by action of the Los Angeles County Board of Supervisors. It asks leave to file this brief as *amicus curiae* because it feels very strongly that the imposition of such a "test oath" is a dangerous infringement of Constitutional guarantees.

Wherefore, applicant prays leave to file the attached brief as *amicus curiae* herein in support of petitioners.

Dated: Los Angeles, California, November 4, 1949.

GEORGE SLAFF,
Attorney for Los Angeles Area Council of the American Veterans Committee.

SEYMOUR MANDEL,
Of Counsel.

IN THE

Supreme Court of the United States

October Term, 1949

No. 49

HELEN PARKER, IONE LANE WHEELER, KATHERINE GATES, CORNELIUS WEBSTER, WILLIAM G. COLE, J. L. MARTIN, ROBERT L. McGUIRE, JULLEANA GLISBY, ALICE M. PARSONS, CAROLINE POTTENGER, JOHN R. McCROSKEY, MATTIE A. BELINO, ADA GRUVER, MAJOR WEST, ALICE WALSH, C. H. DEMAREST, BETTY S. SELDEN, MIRIAM LASAROU, RALPH L. DAVIS, WINIFRED McCONNELL, COLUMBUS S. BELL, SHIRLEY GALAT, RUTH THOMASEN, KENT HAMMOND THIES, LAWRENCE LUCKS,

Petitioners,

vs.

COUNTY OF LOS ANGELES; WILLIAM A. SMITH, LEONARD J. ROACH, JOHN ANSON FORD, RAYMOND V. DARBY and ROGER W. JESSUP, and Each of Them as Members of the Board of Supervisors of Said County; WAYNE ALLEN, as Chief Administrative Officer of Said County; HAROLD W. KENNEDY, as County Counsel of Said County; CHARLES C. MACK, G. H. NEWLAND and T. J. O'KEEFE, and Each of Them, as Members of the Civil Service Commission of Said County; CLIFFORD AMSDEN, as Secretary and Chief Examiner of Said Commission; MICHAEL DONOGHUE, as Registrar of Voters of Said County,

Respondents.

ON CERTIORARI TO THE DISTRICT COURT OF APPEAL, SECOND APPELLATE DISTRICT OF THE STATE OF CALIFORNIA.

The Brief of the Los Angeles Area Council of the American Veterans Committee as Amicus Curiae.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States.

Who the Amicus Curiae Is.

The Los Angeles Area Council of the American Veterans Committee is an organization composed of veterans of World War II. It is a local subdivision of the national parent organization called the American Veterans Committee. Its character is best reflected by the Preamble to the Constitution of the American Veterans Committee, which declares:

> "We, as veterans of the Second World War, associate ourselves regardless of national origin, creed, or color for the following purposes:
>
> "To preserve the Constitution of the United States; to insure the rights of free speech, free press, free worship, free assembly, and free elections; to provide thorough social and economic security to all; to maintain full production and full employment in our country under a system of private enterprise in which business, labor, agriculture, and government cooperate; to promote peace and good will among all nations and all peoples; to support active participation of this Nation in the United Nations and other world organizations whose purposes are to improve the cultural, commercial, and social relations of all peoples; to provide such aid to disabled veterans as will enable them to maintain the position in society to which they are entitled; to provide such financial, medical, vocational, and educational assistance to all veterans as is necessary for complete readjustment to civilian life; to resist and defeat all attempts to create strife between veterans and non-veterans; and to foster democracy.
>
> "We dedicate ourselves to these aims, and for their attainment we establish this constitution."

Why the Brief Is Submitted.

The effect of the test oath challenged in these proceedings upon the organizations listed therein is a real threat to the very existence of such organizations. The fear engendered in the minds of present and potential members of any organization included in such an *Index Expurgatorius*, as it were, can serve only to intimidate persons from joining or continuing their membership. The very act of listing under such circumstances creates an aura of unjustifiable odium about any organization thus listed.

The fact that membership in local chapters of the American Veterans Committee declined after its inclusion in the Los Angeles County *Index*, although it was subsequently apparently purged of the curse of heresy by grace of the Board of Supervisors, is clear indication of the threat to the continued growth of such "proscribed" organizations inherent in governmental action of this nature. When one's means of livelihood is threatened by the fear of engaging in social or fraternal activities which do not meet the approval of governmental officialdom a creeping paralysis of one's normal and valid activities in association with his fellow-men must inevitably set in. The evil effects of such interference with one's rights are pervasive far beyond the local scene upon which they may occur, for certainly if the A. V. C. becomes an object of official obloquy in Los Angeles, it would be naive to assume that repercussions upon A. V. C. will not be felt in San Francisco, in Chicago, in New York—wherever you will. Certainly governmental employees in cities other than Los Angeles will hesitate to continue their membership or to join an organization which has been so stigmatized, unjust as the stigma may be.

The right of the people to join together for their common good—or for what they conceive to be their common good—is as old as our constitutional system itself. Indeed, it is older, for the inhibitions in the Constitution against governmental action which might interfere with the right of the people peaceably to assemble, to speak freely, to petition for redress of grievances arose out of what our forefathers knew to be their rights—and for which they fought a long and bloody war—long before a Constitution of the United States of America came into existence. Governmental action which coerces the people in the peaceful exercise of such basic rights cannot possibly meet the test of constitutional validity.

The American Veterans Committee is composed of Americans who, too, have fought in a long and bloody war to defend the principles upon which our system of constitutional democracy stands. Since the end of that war it has engaged in many peace-time campaigns among our people which have involved matters of perhaps highly controversial opinion for it believes that society must move forward rather than remain fixed in an immobile *status quo*. We hope that the American Veterans Committee will continue in the future to fight freely and vigorously for the principles in which it believes. This we conceive to be not only our duty but our right as Americans under the American Constitution. Because of this conception, we can look only with abhorrence upon governmental action which seeks to deprive us of that right by intimidating our members and our potential members.

We conceive our rights as Americans to be no different and no greater than those of other Americans. Unlike the Los Angeles County Board of Supervisors we claim no special patent upon our own brand of patriotism nor

do we place anyone beyond the pale of constitutional protection whether we agree or disagree with what they believe in. Thus, although we are naturally gravely concerned with the effect of such action as is involved here upon our own organization and membership we are equally concerned with its effect upon the rights of others to join freely in any other organizations of their own choosing. What is an unconstitutional infringement of our rights is equally an unconstitutional impairment of the rights of others.

Our democracy—any genuine democracy—can function effectively only when men are free to think and to speak as free men, alone or in concert, without fear of the punishment which may be visited upon them for their thoughts or associations by bureaucrats bloated with temporary power of office. This Court has been quick in the past to strike down such encroachments upon our liberties. It should be no less prompt today.

Conclusion.

The Los Angeles Area Council of the American Veterans Committee urges the Court to reverse the judgment of the Court below.

Dated: Los Angeles, California, November 4, 1949.

Respectfully submitted,

GEORGE SLAFF,

Attorney for Los Angeles Area Council of the American Veterans Committee.

SEYMOUR MANDEL,

Of Counsel.